

Mar 6<sup>th</sup> Del 1000 Copies to  
JK 573

1897

, W4

Sen. Fol. R

For S M White

Executive Jurisdiction in Diplomatic Affairs.—Constitutional Limitations Protect the Presidential Office.—The Organic law Inhibits Interference by the Legislative Department with the Exercise of Executive Functions.—The Case of Julio Sanguily.

---

## SPEECH

OF

HON. STEPHEN M. WHITE,

OF CALIFORNIA,

IN THE

SENATE OF THE UNITED STATES,

THURSDAY, FEBRUARY 25, AND FRIDAY, FEBRUARY 26, 1897.

---

WASHINGTON.

1897.

R. S.

P.  
Mr. W. A. Smith

JK 573  
1897  
W4

68679



201 Nov. '29

S P E E C H  
OF  
H O N . S T E P H E N M . W H I T E ,

---

The Senate having under consideration the joint resolution (S. R. 207) demanding the release of Julio Sanguily, an American citizen, imprisoned in Cuba—

Mr. WHITE said:

Mr. PRESIDENT: Some time ago I determined to offer certain suggestions with relation to the Cuban question, and especially concerning the Presidential jurisdiction regarding recognition of independence. But as the session was drawing to a close, and as the chairman of the Committee on Appropriations and other members of that committee specially charged with the consideration of those very important measures warned us that there was no time to be spared, I concluded that the Senate would devote itself to the examination of the appropriation bills, and felt that it would be inopportune for me to interject remarks upon another subject. I therefore withheld my views, intending to offer them later on if they seemed relevant to anything that might hereafter occur. But the proceedings this morning have demonstrated that it is not the intention of the Senate of the United States to engage in the business of considering appropriation bills and that we are to spend valuable hours in sensational utterances. We are to engage in fruitless argumentation upon a resolution which can not pass, and which, if passed, would not become effective or even receive Executive consideration; a resolution which could not aid Mr. Sanguily and would, on the contrary, interfere with the effort now being properly made to accomplish his release.

A resolution was offered several weeks past in this body with reference to Cuban independence. That resolution was not pressed. It came in here with considerable flourish of trumpets, if I may be permitted to use such an expression, and was sidetracked. Some reason, no doubt, existed for this. I have no complaint to make on this account, for I am now and have been opposed to its passage.

When the chairman of the Committee on Appropriations [Mr. ALLISON] last night informed the Senate that it was necessary to sit until midnight in order to pass bills to appropriate money to maintain this Government, we were all made aware of the danger of delay, and yet this morning the Senator deliberately displaced the appropriation bills, and practically declared to the people of the United States that the Senate will not, though it can, pass measures of controlling importance, and will needlessly thus create an absolute necessity for the calling of an extra session, while in the opinion of some of us such necessity would not exist if we attended to our plain duty and ceased the making of disturbing remarks.

If we are to discuss Cuba, we shall go on and discuss it. Both sides shall be heard. After a debate which can not be short we

will vote upon a resolution, the passage of which can not, as I have said, be followed by any desirable consequences.

Mr. HALE. Will the Senator from California yield to me?

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Maine?

Mr. WHITE. Certainly.

Mr. HALE. Allow me to suggest here that up to this moment from the beginning of the session all the time on this great subject-matter has been taken up by those who are in favor of what are called the Cuban resolutions. Senators who have not believed it was wise to embark upon that subject or to pass declarations inflammatory in their nature, which would tend to complicate the situation, have contented themselves, as the Senator from California has, as I have, and as have a dozen other Senators, with saying nothing, but depending upon the general conservative spirit of the Senate to go on and do business. We are now within seven or eight days of the end of the session, and Senators should understand that, with this whole subject precipitated, those Senators who heretofore have declined to participate in the debate and have allowed it to go on by the advocates of the Cuban resolutions, can not consent that this matter shall be voted upon until it is thoroughly debated, and it can not be said and urged that it is in the interest of delay, because up to this time hardly one Senator has lifted his voice against any of these resolutions. We have been content to go on and do business, I repeat, and desire now to do that, but Senators may as well understand that here, within one week of the end of the session, with all the appropriation bills which have not been passed pending, to take up this question and to begin to debate it and to follow its debate until the question is taken, substantially confiscates every hour of this session, and no appropriation bill can be passed.

I trust the Senators who voted to displace an important appropriation bill in order to take up this joint resolution will realize that we shall not be taunted because we choose to debate this subject, which the Senate has taken on against our votes, with the charge that we are delaying matters. We have a right to be heard, Mr. President, on this question as well as all of the Senators who have fulminated before the country ever since last December, and who will only be content now in dragging this discussion before the Senate. The matter will be discussed, and the other side will be presented.

Mr. WHITE. Mr. President, in connection with the remarks of the senior Senator from Maine, I may be permitted to observe that I have taken much interest in the legal aspects of this question; but I have refrained from indulging in any lengthy debate, or doing more than to ask a very occasional question of Senators occupying the floor, because I did not wish to interfere with other measures.

The resolution now forced upon us presents so many grave questions that those of us who differ from the majority of the Committee on Foreign Relations should not remain silent, and I for one do not propose to do so. I intend expressing my opinions. It can not be truly stated that I am so acting to consume time, because my course in the past has been demonstrative of my desire in the other direction. If I can prevent the accomplishment of a mistaken plan, I will do so.

Let me ask, preliminarily, What is the object attempted to be

brought about by precipitating this discussion at this time, really in violation of the agreement which was tacitly had last night, to devote this day's session to the consideration of appropriation bills? From 11 o'clock this morning until this moment we have been engaged in discussing this resolution reported by the Committee on Foreign Relations only yesterday, accompanied by a report of 96 pages, a large portion of it closely printed. Are we entitled to examine that report? Can this be done in a minute?

Assuming that there is reason for the passage of this resolution, assuming that there is a result in sight, and a desire to benefit this unfortunate man—though the course adopted is most hurtful to him—assuming all this, let me inquire by what authority and in what manner do Senators who are so fervid expect to accomplish anything by its passage in this body? Let it be granted that the Senate of the United States shall adopt it; let it be granted that those of us who oppose the views of the majority of the Committee on Foreign Relations shall remain silent and allow everything to be said by the other side and permit the resolution to go through intact. Then the House of Representatives is reached; grant that it shall be accorded a favorable reception there—and this is purely a matter of assumption—then, as the resolution is joint, it must be presented to the President of the United States. Is it to be supposed that he will approve it? Manifestly not. I speak from the record, a record of which every Senator should be thoroughly cognizant. The executive department of this Government has had this affair under advisement. The President has been acting within the lines of his authority and has considered this very issue. He has done his duty as he understands it, and if he is to be consistent he will pocket this joint resolution. Do the advocates of this resolution think that anything practical is to be gained by pressing it here and now? It will not benefit Sanguily. It will avail no one.

Mr. HILL. Will the Senator allow me a moment?

Mr. WHITE. Certainly.

Mr. HILL. The premier of the next Administration reported this joint resolution to the Senate yesterday.

Mr. WHITE. Yes, sir.

Mr. HILL. And while he would not ask it to be acted upon then, he expressed a hope that the Senate would take it up to-day and pass it at once. It is whispered to me from the rear that he voted against its consideration to-day; but I was not going to make that statement. I simply suggest that even if the Senate alone passes the resolution, it will at least have some moral effect upon the next Administration, I should hope.

Mr. WHITE. I differ from the Senator from New York. I hope the Senator from New York will not make it incumbent on the chairman of the Committee on Foreign Relations to carry into his policy as Secretary of State the views which he has announced in this Chamber.

Mr. HILL. Why should he not be consistent?

Mr. WHITE. It is within his power and sole jurisdiction. Mr. President, it appears to me, to be or not to be consistent [laughter], and I submit that the Senator from New York should not seek to tread within that sacred circle. [Laughter.]

It is a fact that the Committee on Foreign Relations, having had Cuban affairs under their consideration, and having had an opportunity to press them when a final vote might have been reached,

have nevertheless waited until the appropriation bills have come here, and then have sought a final decision. I for one, occupying a seat upon the minority side of this Chamber, do not wish it truthfully charged that I have been a participant in the defeat of appropriation bills, but I do not propose to be foreclosed of my right to discuss this subject which has been incontinently and improperly interjected into our business.

I think I have shown, Mr. President, that nothing of good can follow the adoption of this joint resolution even by the Senate and the House. It has no place here. Sanguily does not need it. Common sense dictates that his case will not be furthered by its adoption. Why not withdraw it?

Mr. President, there are several resolutions on the Calendar touching the Cuban question. That part of our history which covers Cuban disturbances is rather a peculiar one. I will present the general resolution 163, which I ask may be read at the desk.

The PRESIDING OFFICER (Mr. FAULKNER in the chair). The Secretary will read as requested.

The Secretary read as follows:

That it is hereby declared that a condition of public war exists between the Government of Spain and the government proclaimed and for some time maintained by force of arms by the people of Cuba, and that the United States of America should maintain a strict neutrality between the contending powers, according to each all the rights of belligerents in the ports and territory of the United States.

Mr. WHITE. Then there was introduced the following resolution by the Senator from Georgia [Mr. BACON]:

*Resolved by the Senate (the House of Representatives concurring), That the question of the recognition by this Government of any people as a free and independent nation is one exclusively for the determination of Congress in its capacity as the lawmaking power.*

*Resolved further, That this prerogative of sovereign power does not appertain to the executive department of the Government, except in so far as the President is, under the Constitution, by the exercise of the veto, made a part of the lawmaking power of the Government.*

Then we have the joint resolution of this morning, which has already been read, but which I shall incorporate in my remarks, accompanied, as I said before, by Report No. 1534, comprising 96 pages of largely, closely printed matter.

The joint resolution is as follows:

*Resolved by the Senate and House of Representatives, etc., That the Government of the United States demands the immediate and unconditional release of Julio Sanguily, a citizen of the United States, from imprisonment and arrest under the charges that are pending and are being prosecuted against him in the military and civil courts of Cuba, upon alleged grounds of rebellion and kidnaping, contrary to the treaty rights of each of said Governments and in violation of the laws of nations.*

And the President of the United States is requested to communicate this resolution to the Government of Spain, and to demand of that Government such compensation as he shall deem just for the imprisonment and sufferings of Julio Sanguily.

We have not adopted the resolution regarding independence. At the last session we expressed an opinion favoring recognition of belligerency. This was a mere expression of opinion. It was in no way binding on the Executive. Our attitude is peculiar. We are not willing to recognize the independence of Cuba. In my judgment we are without power to do so. Then we are expected to demand the release of an alleged American citizen charged with the commission of crime abroad. We are required

to find his citizenship, to declare him innocent, and to, by implication, censure the Department of State. All this is to be done without examination—proceeding upon faith entirely—in the last days of this Congress.

Mr. President, the termination of this Administration will soon be witnessed. Everyone in this Chamber knows that upon the most important and radical issue before the American people I dissent from the position of Mr. Cleveland as clearly and as fully as I expect to dissent from the financial policy of the Administration of Mr. McKinley, but I do not permit my views upon one or a dozen subjects to interfere at all with my defense of the conduct of the Executive in the matters now under review. I deem it my duty to see that something is presented in justification of the President and the Secretary of State with reference to unfounded accusations of usurpation which have been repeated with wearying frequency here and elsewhere. Were the appropriation bills allowed a right of way, I would postpone my observations; but I must deal with conditions as I find them.

The joint resolution reported by the Senator from Alabama who sits in front of me [Mr. MORGAN], with the indorsement of the Senator from Ohio [Mr. SHERMAN], who is to be the Secretary of State, comes to us just as this Administration is going out. The Senator from Ohio, as the head of the diplomatic department of the incoming Government, will soon attend to this matter himself. Instead of coming here as chairman of his committee and now seeking to put the burden upon us, let him wait a few days and take the responsibility himself. He will have to do so ultimately. Why does he not abstain rather than to join in an effort to defeat the appropriation bills and precipitate a discussion which can have only that result, and which will not, I assure him, end in the passage of the joint resolution here pending?

Mr. SHERMAN. Will the Senator allow me?

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Ohio?

Mr. WHITE. I yield to the Senator from Ohio gladly.

Mr. SHERMAN. Mr. President, the Senator from California seems to desire to drag me into this debate when I certainly do not care to enter upon it.

As to the joint resolution which is pending, I think it ought to command the unanimous approval of the Senate. I believe in the declaration that injustice, gross injustice, almost barbarous injustice, has been done to a naturalized citizen of the United States, and I say, therefore, that his rights, the rights of even a single person, ought to be respected, guarded, and protected by the Senate of the United States.

I have not, however, been in favor, and am not now in favor, of passing this joint resolution at this moment when it stands in the way of appropriation bills. I have so voted and shall so vote again, and I trust that, after the debate has gone on for a while, Senators here will see the necessity of taking up the appropriation bills and passing them.

I do not think there is any matter of criticism in the fact that this joint resolution was reported from the Committee on Foreign Relations by the honorable Senator from Alabama [Mr. MORGAN] rather than by myself. That was done because he has taken a more active interest in the subject than I. He has prepared a long, full, and detailed report setting out every material fact

which bears upon the case. Therefore at my request that Senator properly reported the joint resolution, and I shall vote for it.

I hope that Senators will not be carried off merely because they have been defeated upon a question of the order of business. They themselves stand in the way of a vote on this resolution. I believe the friends of the joint resolution are willing to vote upon it without delay, and thus the opinion of the Senate may be had and the appropriation bills be taken up; but to say that, because we desire this joint resolution to be passed, we are opposed to the passage of appropriation bills is a gross injustice to us. I intend to support and stand by the Committee on Appropriations this day and until the end of the session, in order that they may complete all the appropriation bills which are necessary in order to carry on the operations of the Government; but that shall not prevent me from doing what I think is right in behalf of any of the people of the United States to protect our citizens against unlawful insolence, violence, and wrong. I trust in God the time will never come when I shall see an American citizen wronged of his rights and persecuted and prosecuted unjustly by any power, great or small. That is the way I feel now.

I am in favor of protecting this particular American citizen, although he is a naturalized citizen, in all the rights of man. I would not see him destroyed or driven to the fate of another naturalized citizen who was probably compelled to kill himself, or who was killed in custody. I am opposed to wrong and violence and tyranny wherever it is exercised, and when it is inflicted upon a citizen of the United States I will stand by him if I am alone.

Mr. WHITE. Mr. President, we are all opposed to wrong. Of course we are all in favor, I hope, of protecting American citizens. I am as resolute in this as the Senator from Ohio. Some of us differ as to exactly how we should go about it; some of us prefer that an American citizen should be actually protected, while some prefer to talk of protection without bringing it about. The American citizen who behaves himself will be protected. Whether he acts lawfully or otherwise, he will be guarded in his rights. But I must have a case reasonably proven before I can act.

The Senator from Ohio, as chairman of the Committee on Foreign Relations, allowed this joint resolution to be brought in, when he knew that thereby he would precipitate a debate and that nothing practical could come of it. Did he think that those of us who have refused heretofore to engage in discussions because we did not wish to interfere with legislation would be driven from the assertion of our conscientious opinions by the pretext that we were consuming time, and this because we do not wish an obnoxious resolution to be voted upon? The Sanguily matter has been before his committee for months, and he selected the most inopportune time for this display. The Senator from Alabama is an able man and thoroughly conversant with these questions, but the Senator from Ohio did not escape any responsibility for himself when the Senator from Alabama reported the resolution. The Senator from Ohio, knowing that this resolution could not be adopted, knowing that within ten days he will be in charge of the State Department, still risked the defeat of the appropriation bills. Having done that, he turns around and says he is in favor of taking up the appropriation bills and regrets the disturbance which he himself has inflicted upon us. This may appear to the Senator

from Ohio to be consistent. It does not appear to me to be very consistent.

More than that, the Senator says that he ascertained that Julio Sanguily was being badly treated. When did he learn that? Within the last two or three days? As chairman of the Committee on Foreign Relations, he ought to have known as much about this matter as those of us who are not upon that great committee. There was brought into the Senate many, many days ago, Senate Document 104, setting forth all the evidence contained in the report of the committee presented to us this morning. So this subject was before the Senator from Ohio, and before those who sympathize and agree with him, weeks ago, and action was withheld until this late hour, when, as I have stated, the able and conservative Senator who is chairman of the Committee on Appropriations had announced the impossibility of legislation unless we devote unremittingly each full day remaining to our proper work. Senate Document 104, containing all this evidence, was filed here on February 1 of this year, and its contents, it is safe to say, were known to the Senator from Ohio much earlier. If he has other information, he has not disclosed it.

The merits of Julio Sanguily's complaint can be dealt with by the Senator from Ohio in ten days from this date in accordance with his views of the proprieties. That it can not be dealt with earlier, except in accordance with the views of the present Administration, is a fact which, whether he likes it or not, he must concede. Why, then, press the resolution? The first and most important question, perhaps, calling for examination, is that involving the power of Congress to pass a general resolution of recognition, either of belligerency or independence. It is not proposed to rely upon legislation enacted upon any supposition or presumption, but it is sought to directly recognize the independence of an alleged Cuban republic, not only without Executive concurrence, but in the face of the fact that the Executive has steadfastly declined to make such recognition. It is the determination of the advocates of Congressional power to force recognition in spite of the Executive. Can this be done? At the outset it is proper to consider whether Congress has any such power, and if it is ascertained that the authority exists, whether a proper case has arisen for its exercise.

When it was stated that the Secretary of State claimed that the Executive possessed the exclusive authority to recognize independence, he was denounced in many quarters, not only in various newspapers, but also upon this floor; and it was even stated here that the doctrine which he advanced was absolutely novel, and that no similar pretension had ever been made. This groundless assertion has been so far modified that a distinguished Senator who ably advocated the so-called Cuban side of the controversy declared that the claim was first made twenty-three years ago. It will be easy to show that not only is there nothing new in the recent announcement of the Secretary of State, but that the view which he has taken seems to be supportable on principle, and is certainly in accord with the best precedents, diplomatic and judicial. There is nowhere in the Constitution a direct delegation, in terms, of power to recognize belligerency. Nothing of the kind is contained in the legislative grant, nor does specific phraseology conferring the authority manifest itself in that part of the organic law which is devoted to the executive department. It was lately

said by a most able and learned Senator, with regard to the constitutional provisions referring to the Congress, that—

There are more provisions devoted to that subject than to any other. It precedes the judicial department; it precedes the executive department; it is first in time, first in right, power, and authority.

And the same learned Senator further remarked:

If, then, the President perversely and lawlessly refuses or declines to appoint an ambassador when Congress desires one in the form of law, we could direct by law that he should appoint one to a particular country; and in case of his further refusal, we could name and designate a person as our political agent to perform such duties as are usually performed by the Presidential appointee, because such a power is necessary and proper to the execution of the paramount power of Congress to regulate our intercourse with foreign nations. And we may well note here how close this construction is in harmony with the Constitution, a harmony designed in all its parts, because such an appointee by Congress, the person temporarily designated by Congress, vested with ambassadorial, consular, or ministerial powers would receive a two-thirds vote of both Houses of Congress, the Senate and the House of Representatives, a larger majority than if he had been appointed and commissioned by the President and the Senate to that office, for such law could only be passed over the veto of the President by a two-thirds vote of both the Senate and the House.

Notwithstanding my high regard for the abilities and character of the distinguished Senator from whom I have quoted, I find myself unable to subscribe to this doctrine. While it is true that a law which passes over the Presidential veto receives a larger majority than would an appointee of the President confirmed by the Senate, yet it appears to me that this is not the point at all. The treaty-making power is vested in the Executive, subject to the advice and consent of the Senate, and while a treaty may be repealed by a law, it can not be made in any other way than that designated in the organic instrument. The President must propose the treaty. He may withdraw a treaty before ratification. He may decline to submit an amended treaty to the other contracting power. If the Senate unanimously votes to make a treaty, such vote is of no effect unless the Executive submits the convention.

President Harrison, without consulting the Senate or either branch of Congress, recognized the Dole Government of the Hawaiian Islands, and the Secretary of State, on the 15th of February, 1893, placed before Congress a treaty of annexation entered into by this Government with the representatives of the new establishment of Hawaii. This treaty was being considered by the Senate when it was withdrawn by President Cleveland, and although it has been generally supposed that a majority of the Senate favored the scheme outlined in that document, no opportunity was given to vote upon it, and no one denied the authority of the President to withdraw the proposition; and whether the Senate relished Mr. Cleveland's action or did not relish it was entirely immaterial. He had the constitutional power to act as he did, and although Senators might have considered that they were better advised in the premises than the President, nevertheless this faith in themselves was not potential enough to overcome constitutional obstacles.

I can not bring myself to believe that the mere fact that Congressional powers are enumerated earlier in the Constitution than those of the Executive adds anything to the authority expressly given. The words used to confer power upon the Executive are just as potential for the purposes named as those which demark legislative limits. While it is true, perhaps, that the more weighty

obligations are assigned to the Congress, yet this does not affect the completeness and exclusiveness of the Presidential grant as far as made. If the Supreme Court, contumaciously or corruptly, fails to decide cases submitted to it, Congress can not, for that reason, do the work of the court. The argument that there is danger that the President may refuse to do his duty is not new. It was largely acted upon in the formulation of the Articles of Confederation, but the views of our early statesmen were considerably modified when the constitutional convention met. That power given might be abused all knew. It was not expected that a system could be devised which would render usurpation or other misconduct impossible. Various duties were assigned to different officers in the hope that such distribution would result beneficially, and that evil would less frequently prevail than under other dispensations. The claim made that the President represents the one-man power and Congress the people is mythical.

The President and Congress and the judiciary each and all represent the people, and the Government thus formed constitutes that system, composed of three independent departments which the people have ordained. The department which is the repository of executive power is the creation of the people and represents their behests, and he who seeks to deprive the executive of those rights attacks the people and endeavors to avoid the popular will constitutionally expressed. Congress can not usurp executive functions. If the President may not exercise power conferred upon Congress, so also is it true that Congress can not trench upon executive territory. The functions permitted to the executive and those committed to the judiciary and Congress in the aggregate constitute, as I have said, the governmental scheme outlined in the organic law. It appears to me peculiar to hold that the defined and limited jurisdiction of the Congress possesses an absorbing and accumulating nature adequate to draw to itself the nonasserted powers of the other departments, that Congress is the beneficiary of executive nonaction.

If it be true that we are governed under a system of delegated powers, under what rule of construction can we hold that, although the Constitution gives to the President and does not give to Congress the power to appoint ambassadors, nevertheless, if the President refuses to do so, Congress may undertake his constitutional duty? It seems to be thought that the exigencies of the situation will justify this. No exigency can warrant the doing of any act by either department not permitted by the Constitution. The powers not conferred by the Constitution are reserved. This reservation is not made in favor of Congress. It was not designed to give plenary authority to Congress. The people, it is true, jealously guarded their rights, but the whole plan was formed to protect their interests. The experiences of the confederation had not been lost. The ablest men of the time believed that three departments, distinct, independent, each separated from the other by impassable lines, were essential to the perpetuity of free institutions. Neither of these can lawfully grasp jurisdiction because of nonexertion by the department to which it has been committed.

The absolute separation of the executive from the other departments was early the subject of solicitude. In the convention Mr. King expressed his apprehension that an extreme caution in favor of liberty might enervate the Government we were forming. He

wished the House to recur to the primitive axiom that the three great departments of government should be separate and independent; that the executive and judiciary should be so as well as the legislative; that the executive should be so equally with the judiciary. Those who desire to study this portion of the debates will find it in the Second Journal Constitutional Convention (Madison), page 394.

During the debate upon the executive power, Mr. Madison said (1 Journal, page 387):

If it be a fundamental principle of free government that the legislative, executive, and judiciary powers should be separately exercised, it is clear also that they be independently exercised. There is the same and perhaps greater reason why the executive should be independent of the legislative than why the judiciary should.

This, Mr. President, is the language of Madison.

It was well said by the Supreme Court of the United States in *Marbury vs. Madison* (1 Cranch, 176):

The powers of the legislature are defined and limited, and that those limits may not be mistaken or forgotten, the Constitution is written. To what purposes are powers limited and to what purpose is that limitation committed to writing if these limits may at any time be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.

And in the same case it was also said:

Questions in their nature political, or which are by the constitutional laws submitted to the Executive, can never be made in this court.

In *Kendall vs. United States* (12 Peters, 610) the court said:

The executive power is vested in a President, and as far as his powers are derived from the Constitution he is beyond the reach of any other department, except in the mode prescribed by the Constitution through the impeaching power.

The very basis of our governmental plan is the distribution of responsibility among the several departments. Unquestionably the Executive may fail to do his duty, and great public interests may be sacrificed; but so, also, may it be said that Congress may fail to act discreetly, and thereby sacrifice grave public interests. Charges of that kind have been often made, and there has been much evidence in support of the accusations.

If Congress has the right to appoint an ambassador in the case already mentioned, who is to determine whether the refusal of the President to make an appointment has been perverse or lawless? The answer will probably be that Congress must determine the fact. Therefore, it necessarily results that whenever the legislative department may decide to harass the President, it can find this jurisdictional fact and can thereupon assert his prerogatives, and practically exercise the functions of government committed to him.

But I am unable to find a word in the Constitution directly or by implication assigning Presidential functions to Congress when the Executive declines to act affirmatively. As well might it be urged that a similar failure of Congress, with reference to some conceded duty, such as appropriating money for necessary public purposes, would vest authority in the President to meet the exigency. With equal reason it might be contended that because the Senate to-day declines to act upon appropriation bills, and devotes itself to issues upon other topics, that therefore the President alone has the power to appropriate money.

Presidential obligation or Congressional duty are not enjoined conditionally. The grant is in each instance absolute. Neither department has a contingent right to move. The location of jurisdiction is fixed by the instrument and not by the whim or caprice of the official. It can always be found. It needs no expert to discover it, nor is it located first here and then there. The plea that somebody could act the fool or the knave was no doubt a factor in the convention's deliberations. If it was believed that a man selected to the highest national office could be trusted to obey the Constitution, especially with the sword of impeachment hanging over him, such assumption was probably based upon the idea that the people would most likely choose an honest and capable man, and that the presence of such honesty and capability was necessarily involved in the faith of the fathers that a republican government was possible.

The authors of the *Federalist* frequently had occasion to refer to the division of power, and they strenuously contended that proper lines of demarcation had been provided. There is not a hint anywhere indicating that it was supposed that Congress had the right to exercise in any event or at all the duties assigned to the Executive.

The President has power to grant reprieves and pardons, except in cases of impeachment, and this authority is exclusive, as stated in *Klein's case*. (13 Wall. U. S., 138.) He is also given jurisdiction, by and with the advice of the Senate, to make treaties, and he shall nominate and by and with the advice of the Senate shall appoint ambassadors, etc. The exclusiveness of the grant is as evident in the case of the executive as in the Congressional and judicial instances. Mr. Justice Story says:

In the government of this commonwealth the legislative department shall never exercise the executive or judicial powers, or either of them, etc. (1 Story, *Cons.*, section 520.)

James Wilson, who was an associate justice of the Supreme Court of the United States and professor of law in the College of Philadelphia, in the course of a lecture delivered by him on "Government" (to be found in volume 1, *Wilson's Works*, Andrews's edition, page 365) says:

Though the foregoing great powers, legislative, executive, and judicial, are all necessary to a good government, yet it is of the last importance that each of them be preserved distinct and unmingled in the exercise of its separate powers with either or with both of the others. Here every degree of confusion of the plan will produce a corresponding degree of interference, opposition, combination, or perplexity in its execution. \* \* \* Liberty and security in government depend not on the limits which the rulers may please to assign to the exercise of their own powers, but on the boundaries within which their powers are circumscribed by the constitution.

He further says (page 367)—and his language may be quoted with appropriateness here:

Each of the great powers of government should be independent as well as distinct. \* \* \* The independency of each power consists in this, that its proceedings, and the motives, views, and principles which produce those proceedings, should be free from the remotest influence, direct or indirect, of either of the other two powers.

In speaking of the power of the President to grant pardons, Mr. Rawle (*Rawle on the Constitution*, page 164) concludes that in the case of a vacancy in the office of President there is no power to grant pardons, and remarks (page 166) that in the exercise of the benign prerogative of pardoning it has been justly said that the President stands alone.

The authors of the Federalist understood that they were giving to the President considerable authority.

Mr. Madison's remarks, to be found in the thirty-eighth number of the Federalist, pages 291, 292, Hamilton's edition, clearly prove that he was not only cognizant of the fullness of executive power, but that he justified it.

In discussing the objections made to the Constitution with reference to the blending of powers, Mr. Madison declares (47 Federalist, 373):

No political truth is certainly of greater intrinsic value or is stamped with the authority of more enlightened patrons of liberty than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. Were the Federal Constitution, therefore, really chargeable with this accumulation of power, or with a mixture of powers, having a dangerous tendency to such an accumulation, no further arguments would be necessary to inspire a universal reprobation of the system. I persuade myself, however, that it will be made apparent to every one that the charge can not be supported, and that the maxim on which it relies has been totally misconceived and misapplied.

I quote again from Mr. Madison:

It is agreed on all sides that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident that neither of them ought to possess, directly or indirectly, an overruling influence over the others in the administration of their respective powers. It will not be denied that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it.

After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judicial, the next, and most difficult task, is to provide some practical security for each against the invasion of the others. What this security ought to be is the great problem to be solved.

Will it be sufficient to mark, with precision, the boundaries of these departments, in the Constitution of the Government, and to trust to these parchment barriers against the encroaching spirit of power?

This is the security which appears to have been principally relied on by the compilers of most of the American constitutions. But experience assures us that the efficacy of the provision has been greatly overrated, and that some more adequate defense is indispensably necessary for the more feeble against the more powerful members of the Government. The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex.

Said Mr. Justice Harlan, in *Clough vs. Curtis* (134 U. S., 371):

One branch of this Government, this court said in the *Sinking Fund Cases* (99 U. S., 700), can not encroach on the domain of another without danger. The safety of our Constitution depends in no slight degree on the strict observance of this salutary rule.

It is undoubtedly true, as said by Chief Justice Fuller in *Ex parte Tyler* (149 U. S., 164), that the maintenance of a system of checks and balances characteristic of republican institutions requires the coordinate departments of Government, whether Federal or State, to refrain from infringement on the independence of each other.

It might be added that the lodgment of concurrent authority in the executive and legislative departments could never have been intended. The confusion sure to ensue from such a plan is manifest. Nor is there any reason to suppose that any Presidential prerogative is made dependent upon the nonaction of Congress. If there is a word in the Constitution justifying the assertion that the President has the right to recognize independence until Congress sees fit to act, and that then his power ceases, it has not been pointed out. The Presidential power in this respect has been

exercised during recess and when Congress was in session, and has never been successfully combated.

By affixing his signature to an act or a treaty containing such phrase, the President does not effect any change in the Constitution. He can not take constitutional power in virtue of any clause of an act of Congress; nor can he so surrender it. The constitutional power of each of the three great departments of the Government, respectively, belongs to the offices, not the officers, and can not, by any act or words of theirs, be withdrawn from the permanent and pervading authority of the Constitution. (7 Op. Atty. Gen. (Cushing), 276.)

Said Attorney-General Black (9 Op. Atty. Gen., 468-469):

As Commander-in-Chief of the Army it is your (the President's) own judgment what officer shall perform any particular duty, and as the supreme executive magistrate you have the power of appointment. Congress could not, if it would, take away from the President, or in any wise diminish, the authority conferred upon him by the Constitution. \* \* \* If Congress had really intended to make him independent of you, that purpose could not be accomplished in this indirect manner any more than if it was attempted directly. Congress is vested with legislative power; the authority of the President is executive. Neither has a right to interfere with the functions of the other.

Whether the powers conferred upon Congress are more important than those devolving upon the President it is immaterial to inquire. It may be assumed for the sake of argument that the greater responsibility rests upon the former. It is, nevertheless, true that the failure on the part of the President to exercise those functions which pertain to his office and which are not permitted to Congress, can not result in an investiture of authority in the legislative department; nor is it correct to say that the framers of the Constitution intended to subordinate the Executive to the Congressional will in cases other than those where such intention is plainly announced.

In considering the President, Hamilton said (The Federalist, No. 73, page 546):

The propensity of the legislative department to intrude upon the rights and to absorb the powers of the other departments has been already more than once suggested; the insufficiency of a mere parchment delineation of the boundaries of each has also been remarked; and the necessity of furnishing each with constitutional arms for its own defense has been inferred and proved.

In further discussing the reasons for the conferring of authority upon the President, Mr. Hamilton continues (page 547):

The propriety of the thing does not turn upon the supposition of special wisdom or virtue in the Executive, but upon the supposition that the legislative will not be infallible; that the love of power may sometimes betray it into a disposition to encroach upon the rights of the other members of the Government; that the spirit of faction may sometimes prevent its deliberations; that impressions of the moment may sometimes hurry it into measures which its own mature reflection would condemn.

Examples of this kind are, as we all know, of frequent occurrence. These expressions were used with reference to the veto power, but demonstrate that the legislative department was not regarded as constituting an errorless tribunal.

The same view of the subject has been taken by constitutional writers since that time. Justice Miller, in his Lectures on Constitutional Law, page 94, mentions the fear which was entertained with reference to the powers of the executive, and in commenting thereon he says:

This belief, though natural enough at that time, was a very great mistake. The nearer we approach to individual responsibility in the executive, the nearer will it come to perfection. It is my deliberate opinion that of all the

three branches which have been discussed, the executive has been in time, under the construction given to the Federal Constitution and its practical administration, most shorn of the powers granted to it thereby. \* \* \* But the branch of the Government which has grown the most, and which a sagacious man might, perhaps, have foreseen would so expand, is the legislative.

Justice Miller also says (Lectures, page 157):

The experience of a century of the operations of the Government has shown that while the growth of the country in territory, in population, in wealth, and in power has added largely to the patronage of the Executive in the way of appointments to office and to the importance of those offices, and while the frequent accession of successful and popular military chiefs to the Presidency, some of whom were men of arbitrary disposition, and well inclined to the exercise of all the power which the Constitution gave them, and who have shown in every instance a disposition for a continuance in power by seeking or accepting a reelection, there has never been the slightest danger to the liberties of the country, or of an overthrow of the existing institutions, or of any material infraction of the general principles of constitutional government from this quarter. In fact, of all the three branches of the constitutional government of the United States, the executive has been the most crippled, confined, and limited in its practical use, during the period mentioned, of the power really conferred on it.

See also Story on the Constitution, section 1570.

These comments, it is submitted, are sufficient to justify the statement that the powers delegated to the Executive by the organic law are not, in the event of his neglect to exercise the same, vested in any other department of the Government. It is true that impeachment can scarcely be called a remedy, but it is likewise true that the power to impeach is a deterrent, and the responsibility of the President to the people and the authority vested in Congress to impeach him constitute ample security against maladministration. To assume that it is necessary or that it would be proper to otherwise limit the authority of the Chief Magistrate is to insinuate that the system under which we are operating is a failure, and that the people can not find within their midst a man to whom the discharge of the obligations of the Chief Magistracy can be safely confided. I will hereafter discuss the relative fitness of the Executive and Congress to deal with diplomatic questions.

During the convention Mr. Morris remarked, in response to a suggestion by Mr. Madison, who favored the trial of the President on impeachment proceedings by the Supreme Court, that he thought no other tribunal than the Senate could be trusted. The Supreme Court were too few in number, and might be warped or corrupted. He was against a dependence of the Executive on the Legislature, considering the legislative tyranny the great danger to be apprehended; but there could be no danger that the Senate would say untruly, on their oaths, that the President was guilty of crimes or facts, especially as in four years he can be turned out.

Those who are curious with reference to this interesting portion of the discussion can find it in 5 Elliott's Debates, page 528.

It is evident that these great men deduced from their impartial study of the question the conclusion that it was necessary to guard against legislative usurpation.

THE RIGHT TO RECOGNIZE THE INDEPENDENCE OR BELLIGERENCY OF A FOREIGN GOVERNMENT IS VESTED EXCLUSIVELY IN THE EXECUTIVE.

I understand that it is generally conceded that the President has the power to recognize belligerency and independence, but it is claimed that this power is not exclusive, and that it is subject to the paramount authority of Congress. However, suggestions have been made to the effect that the Executive does not possess

the power at all; that it is purely legislative. I will therefore first consider the subject in that aspect, and if I can show that the power does exist in the Executive, its exclusive character must, I think, be admitted.

It appears to me that if the President has the authority at all, such authority must be exclusive. I can not conceive, as already intimated, that there can be a concurrent delegation of the power to recognize to both Congress and the Executive, and it seems to me clearly untenable to assert that while the President may, if Congress remains passive, recognize belligerency or independence, nevertheless his action can be neutralized or reversed by act of the legislative department. But I will examine this branch of the subject as the argument progresses.

Among Presidential duties is that which authorizes the reception of ambassadors and other public ministers.

Judge Story, perhaps the ablest commentator upon the Constitution, treats this section as follows:

SEC. 1565. The next power is to receive ambassadors and other public ministers. This has been already incidentally touched. A similar power existed under the confederation; but it was confined to receiving "ambassadors," which word, in a strict sense (as has been already stated), comprehends the highest grade only of ministers, and not those of an inferior character. The policy of the United States would ordinarily prefer the employment of the inferior grades; and therefore the description is properly enlarged, so as to include all classes of ministers. Why the receiving of consuls was not also expressly mentioned, as the appointment of them is in the preceding clause, is not easily to be accounted for, especially as the defect of the confederation on this head was fully understood. The power, however, may be fairly inferred from other parts of the Constitution; and, indeed, seems a general incident to the executive authority. It has constantly been exercised without objection; and foreign consuls have never been allowed to discharge any functions of office until they have received the exequatur of the President. Consuls, indeed, are not diplomatic functionaries or political representatives of a foreign nation, but are treated in the character of mere commercial agents.

SEC. 1566. The power to receive ambassadors and ministers is always an important and sometimes a very delicate function, since it constitutes the only accredited medium through which negotiations and friendly relations are ordinarily carried on with foreign powers. A government may, in its discretion, lawfully refuse to receive an ambassador or other minister without its affording any just cause of war. But it would generally be deemed an unfriendly act, and might provoke hostilities unless accompanied by conciliatory explanations. A refusal is sometimes made on the ground of the bad character of the minister, or his former offensive conduct, or of the special subject of the embassy not being proper or convenient for discussion. This, however, is rarely done. But a much more delicate occasion is when a civil war breaks out in a nation, and two nations are formed, or two parties in the same nation, each claiming the sovereignty of the whole, and the contest remains as yet undecided, *flagrante bello*. In such a case a neutral nation may very properly withhold its recognition of the supremacy of either party or of the existence of two independent nations, and on that account refuse to receive an ambassador from either. It is obvious that in such cases the simple acknowledgment of the minister of either party or nation might be deemed taking part against the other, and thus as affording a strong countenance or opposition to rebellion and civil dismemberment. On this account, nations placed in such a predicament have not hesitated sometimes to declare war against neutrals as interposing in the war, and have made them the victims of their vengeance when they have been anxious to assume a neutral position. The exercise of this prerogative of acknowledging new nations or ministers is therefore, under such circumstances, an executive function of great delicacy, which requires the utmost caution and deliberation. If the Executive receives an ambassador or other minister as the representative of a new nation, or of a party in a civil war in an old nation, it is an acknowledgment of the sovereign authority *de facto* of such new nation or party. If such recognition is made, it is conclusive upon the nation, unless, indeed, it can be reversed by an act of Congress repudiating it. If, on the other hand, such recognition has been refused by the Executive, it is said that Congress may, notwithstanding, solemnly acknowledge the sovereignty of the nation or party. These, however, are propositions which have hitherto remained as abstract statements under the Constitution, and therefore can

be propounded, not as absolutely true, but as still open to discussion if they should ever arise in the course of our foreign diplomacy. The Constitution has expressly invested the Executive with power to receive ambassadors and other ministers. It has not expressly invested Congress with the power either to repudiate or acknowledge them. At all events, in the case of a revolution or dismemberment of a nation, the judiciary can not take notice of any new government or sovereignty until it has been duly recognized by some other department of the Government to whom the power is constitutionally confided.

SEC. 1567. That a power so extensive in its reach over our foreign relations could not be properly conferred on any other than the executive department will admit of little doubt. That it should be exclusively confided to that department, without any participation of the Senate in the functions (that body being conjointly intrusted with the treaty-making power), is not so obvious. Probably the circumstance that in all foreign governments the power was exclusively confided to the executive department, and the utter impracticability of keeping the Senate constantly in session, and the suddenness of the emergencies which might require the action of the Government, conduced to the establishment of the authority in its present form.

Plainly indicating that it was the view of that distinguished jurist that the Constitution had vested this authority not temporarily, not during a recess of Congress, but permanently and exclusively in the executive department. He continues:

It is not, indeed, a power likely to be abused, though it is pregnant with consequences often involving the question of peace or war. And in our own short experience the revolutions in France and the revolutions in South America have already placed us in situations to feel its critical character and the necessity of having at the head of the Government an Executive of sober judgment, enlightened views, and firm and exalted patriotism.

SEC. 1568. As incidents to the power to receive ambassadors and foreign ministers, the President is understood to possess the power to refuse them, and to dismiss those who, having been received, become obnoxious to censure, or unfit to be allowed the privilege by their improper conduct, or by political events. While, however, they are permitted to remain as public functionaries, they are entitled to all the immunities and rights which the law of nations has provided at once for their dignity, their independence, and their inviolability.

In a note to Judge Story's work we find the following:

NOTE 1.—It is surprising that The Federalist should have treated the power of receiving ambassadors and other public ministers as an Executive function of little intrinsic importance. Its language is, "This, though it has been a rich theme of declamation, is more a matter of dignity than of authority. It is a circumstance which will be without consequence in the administration of the Government. And it was far more convenient that it should be arranged in this manner than that there should be a necessity of convening the Legislature, or one of its branches, upon every arrival of a foreign minister, though it were merely to take the place of a departed predecessor.—*The Federalist*, No. 69, page 421.

It is perhaps fair, let me observe, to assume that the attack made upon this provision did not arrest great attention. The avowed purpose of The Federalist was to discuss only objections made by the opponents of the proposed plan, which seemed to be serious. The failure to regard this provision as of vital import was not astonishing because of the absence of circumstances which eventuated in later years. That The Federalist was not always conclusive, appears by reference to No. 77, where it is expressly stated that the President possesses the power to remove officers only by or with the advice and consent of the Senate—a misconception long indulged in. (See 5 Op. Atty. Gen. (Crittenden), 290, 291.)

Judge Story, in that portion of the commentaries to which I have alluded, says:

If, on the other hand, such recognition has been refused by the Executive, it is said that Congress may, notwithstanding, solemnly acknowledge the sovereignty of a nation or party.

It will be noted that the learned commentator does not adopt this opinion, but the authority to which he refers is Rawle on the

Constitution, chapter 20, pages 195, 196. Mr. Rawle published his commentaries in 1825. Although his work was exceedingly valuable, yet some of his conclusions were found to be untenable, and the book has practically passed out of print. It is not easy to discover where Mr. Rawle found the authority for his statement, and his contention is successfully combated by Judge Story, not only in the comments which I have read, but in a decision by that great jurist to which I will in a moment allude. Judge Story's work was published in 1833, and afterwards, and while he was an associate justice of the Supreme Court of the United States, he rendered the decision in *Williams vs. The Suffolk Insurance Company* (3 Sumner, 272 et seq.). He there said:

The Government of Buenos Ayres insists that the Falkland Islands constitute a part of the dominions within its sovereignty, and, consequently, that it has the sole jurisdiction to regulate and prohibit the seal fishery at those islands, and to punish any violation of its laws by a confiscation of the vessels and property engaged therein. On the other hand, the American Government insists that the Falkland Islands do not constitute any part of the dominions within the sovereignty of Buenos Ayres; and that the seal fishery at those islands is a trade free and lawful to the citizens of the United States, and beyond the competency of the Buenos Ayres Government to regulate, prohibit, or punish. The controversy is still undisposed of by the two Governments, each maintaining its own claims and pretensions, and neither admitting the claims or pretensions of the other. In this state of the diplomacy between the two countries, while the whole matter is in contestation between them, or, as we may say, *flagrante lite*, the question is whether it is competent for this court to reexamine and decide, in its judicial capacity, upon the claims and pretensions of the two Governments, and thus to interpose its positive umpirage to settle the matters in dispute, at least to the extent required for the proper adjudication of the cases now before it.

It will be noted the issue was clearly presented. The material, the vital, the relevant issue was whether the islands named belonged or did not belong within a certain jurisdiction, and therein was involved the other question as to whether a determination had been legally reached upon that subject. He continues:

My judgment is that this court possesses no such authority, and that it is bound up by the doctrines and claims insisted on by its own government, and that it must take them to be rightful until the contrary is established by some formal and authorized action of that government.

Now, let us see how the "government" alluded to manifested its decision.

I wish to direct the attention of the Senate particularly to this judicial announcement:

It is very clear, that it belongs exclusively to the executive department of our Government to recognize, from time to time, any new governments which "may arise in the political revolutions of the world; and until such new governments are so recognized, they can not be admitted by our courts of justice to have or to exercise the common rights and prerogatives of sovereignty."

Mr. President, here is a decision handed down in 1838, which clearly announces the doctrine for which the present Secretary of State, Mr. Olney, contends, and which has been lately condemned as revolutionary. Here it is announced from the bench by one of the ablest jurists who ever presided over a court, clearly and positively, that the power to recognize is not only vested in the Executive, but that such an investiture is exclusive.

The Supreme Court of the United States affirmed the judgment in *Williams vs. The Suffolk Insurance Company* (13 Peters, 420), using this language:

And can there be any doubt that when the executive branch of the Government, which is charged with our foreign relations, shall in its correspondence with a foreign nation assume a fact in regard to the sovereignty of any island or country, it is conclusive on the judicial department? And in

this view it is not material to inquire, nor is it the province of the court to determine, whether the Executive be right or wrong. It is enough to know that in the exercise of his constitutional functions he has decided the question. Having done this under the responsibilities which belong to him, it is obligatory on the people and Government of the Union.

If this were not the rule, cases might often arise in which, on the most important questions of foreign jurisdiction, there would be an irreconcilable difference between the executive and judicial departments. By one of these departments a foreign island or country might be considered as at peace with the United States, whilst the other would consider it in a state of war. No well-regulated government has ever sanctioned a principle so unwise and so destructive of national character.

And yet, Mr. President, we have heard it asserted again and again that this doctrine of the Supreme Court of the United States—the declared judgment of the highest judicial tribunal known to our law, promulgated many years ago—is unprecedented. It has been even intimated that the Secretary of State who proclaimed it risked impeachment. Perhaps it may be a crime to declare the law. It is clear that the Supreme Court believed that the President in recognizing independence on his own responsibility did so “in the exercise of his constitutional functions.”

I know that it was said by the distinguished Senator from Georgia [Mr. BACON] that those portions of these decisions which relate to Executive jurisdiction are obiter dicta. It may be that it was unnecessary to decide whether or not the Executive authority was exclusive; but it is plain that the jurisdiction of the Executive to effectively recognize independence was a material issue absolutely necessary to the decision of the case. These authorities are conclusive of the existence of Executive control if the Supreme Court has any jurisdiction to settle such questions. If the Executive, without Congress, can not recognize, then the basis of the court's decision drops out.

My object in citing this case is to disclose the views entertained by Judge Story and his associates. That jurist had considered the subject in his commentaries, as I have shown, and hence his attention had been specially directed to the matter, and he had also in mind Mr. Rawle's view already referred to, and upon which he had commented, and, taking the expressions contained in the commentaries and those found in the decision in 3 Sumner above mentioned, it is obvious that it was the carefully thought-out opinion of Judge Story that the authority to recognize was exclusively in the Executive.

I have had occasion to consider this topic to some extent when resolutions advising a recognition of belligerency were before the Senate, and I then referred to several adjudications, and I shall take the liberty of again citing some of them in brief.

In 2 Black, 670, I find the following:

Whether the President, in fulfilling his duties as commander-in-chief in suppressing an insurrection, has met with such armed hostile resistance and a civil war of such alarming proportions as will compel him to accord to them the character of belligerents, is a question to be decided by him, and this court must be governed by the decisions and acts of the political department of the Government, to which this power was intrusted. He must determine what degree of force the crisis demands.

It is plain that it was the opinion of the Supreme Court that the President was authorized and was the proper party to find the facts as to belligerency. It is true that the conflict involved was domestic, but the citation is nevertheless relevant. It will be noted that “political department” is used as synonymous with

“executive department.” Judge Story evidently thought that the word “government” was used as equivalent to “executive department” in *Gelston vs. Hoyt* (3 Wheat., 324), because that case is referred to by him in *Williams vs. Suffolk Insurance Company* as upholding the jurisdiction in the President to proclaim belligerency.

In *Kennett vs. Chambers* (14 How., 50, 51), Chief Justice Taney said:

It is not necessary in the case before us to decide how far the judicial tribunals of the United States would enforce a contract like this, when two States, acknowledged to be independent, were at war and this country neutral. It is a sufficient answer to the argument to say that the question whether Texas had or had not at that time become an independent State was a question for that department of our Government exclusively which is charged with our foreign relations, and until the period when that department recognized it as an independent State, the judicial tribunals of the country were bound to consider the old order of things as having continued and to regard Texas as a part of the Mexican territory.

In alluding to the constitutional power, or rather to the power of the President derived from the Constitution with reference to our foreign relations, I beg leave to quote from Chancellor Kent. Said that very able man:

The President is the constitutional organ of communication with foreign powers.

It was evidently the view of that able jurist that the Presidential duty in this respect was not derived from any statute and did not depend upon the will of Congress.

Again he says:

The power of receiving foreign ministers includes in it the power to dismiss them, since he (the President) alone is the organ of communication with them, the representative of the people—

Not the representative of Congress, but “the representative of the people”—

in all diplomatic negotiations, and accountable to the community not only for the execution of the law, but for competent qualifications and conduct of foreign agents.

It is to be noted that according to this statement the President is the representative of the people in all diplomatic negotiations, and he is said to be accountable to the community. There is no intimation that he is accountable to Congress in this regard. He derives the authority from a higher source, from the people. He rests upon the consent of the governed, as evidenced by the Constitution.

During the recent Chilean difficulty it was held by the district court of the United States for the southern district of California as follows:

It is beyond question that the status of the people composing the Congressional party at the time of the commission of the alleged offense is to be regarded by the court as it was then regarded by the political or executive department of the United States. This doctrine is firmly established. (*U. S. vs. Trumbull*, 49 Fed., 99, 104.)

And in the *Itata* case (56 Fed., 510) Judge Hawley, speaking for the circuit court of appeals, said:

The law is well settled that it is the duty of the courts to regard the status of the Congressional party in the same light as they were regarded by the executive department of the United States at the time the alleged offenses were committed.

It thus appears that whenever our courts have been called on to solve an issue which depends upon the existence or nonexistence of a nation they have turned uniformly to the executive, and have

accepted the determination of that department as conclusive and binding upon them. Can it be, Mr. President, that this jurisdiction thus affirmed by our judiciary and announced for years and years by all the departments of our Government rests *pro hac vice* only in the Executive, and that his authority is of such flimsy tenure that it is subject to Congress; that he is possessed of the power to recognize only when Congress does not see fit to withdraw it from him? Is there any scheme in the organic law for an appeal from Executive action in this matter? Either the power to recognize is vested in the Executive or it is not. If the right is conceded, then, in the absence of any constitutional limitation, it must, I assert, be exclusive. That he does not derive it from any act of Congress is obvious, for no one has pointed to an act of Congress presuming or pretending to give him any such right.

I have said, Mr. President, in line, as I take it, with the authorities on which I have been commenting and to which I have attempted to attract the attention of the Senate, that if it be conceded that the Executive has the power to recognize independence, then, unless there can be pointed out in the Constitution some limitation of that power, some appellate jurisdiction in Congress, some restriction upon it, something justifying the conclusion that in the absence of Presidential exercise of that authority it may be assumed by Congress, the conclusion inevitably follows that the Presidential prerogative is attached to that office only, and that the President either derives his authority from the Constitution or he does not possess it at all. It further appears evident that if the Executive may recognize independence, the debate is at an end as to the point now considered, and the position of the Secretary of State is justified.

Mr. Wharton, whose abilities as a lawyer and as an author and whose researches into matters pertaining to international affairs earned for him high reputation throughout the civilized world, compiled a digest on the international law of the United States, pursuant to authority given by Congress and under the Congressional eye, and this work comes nearer constituting an accepted American text-book upon this subject than any other treatise. In discussing this subject, he heads the section with reference to belligerency as follows: "Such recognition (i. e.), belligerency determinable by Executive," and he cites with apparent approval a statement of Secretary Seward in his letter to Mr. Dayton, wherein it is said:

It is, however, another and distinct question whether the United States would think it necessary or proper to express themselves in the form adopted by the House of Representatives. This is a practically and purely executive question, and the decision of it constitutionally belongs not to the House of Representatives, nor even to Congress, but to the President of the United States.

He was discussing at that time a proceeding in the House of Representatives touching the recognition of the alleged newly formed Government of Mexico, pertaining to a protest made by the House of Representatives, wherein they affirmed their hostility to the encroachments of monarchic powers within the confines of a sister republic. Mr. Seward thus asserted jurisdiction—exclusive jurisdiction—in the Executive, and in so doing he followed the line of precedents heretofore mentioned, and from which the State Department has deduced a uniform rule of conduct, and has regarded the claim of exclusive right in the Executive as based upon the correct interpretation of the Constitution.

While the Executive has rarely, as in the case of President Jackson in the Texas matter, sought the advice of Congress as to such issues, this advice has never been asked as signifying a doubt of the executive claim, or an assertion that the jurisdiction rested elsewhere than in the Executive. The opinion of Congress has been solicited merely in an advisory way. Congress often seeks to advise without being requested so to do, and may, I presume, when solicited, contribute the notions of its members. The value of such advice is quite another thing. No legal force can be affirmed of it.

A question touching this topic was passed on by Chief Justice Marshall in *United States vs. Hutchings* (2 Wheeler Crim. Cases, 516). The opinion of that able jurist is thus given by the reporter:

The court decided that the commissions shall go to the jury merely as papers found on board the vessel; but on the main question the court was of opinion that a nation became independent from its declaration of independence only as respects its own government and the various departments thereof; that before it could be considered independent by the judiciary of foreign nations it was necessary that its independence should be recognized by the executive authority of those nations; that as our Executive had never recognized the independence of Buenos Ayres, it was not competent to the court to pronounce its independence.

It may be argued that here again the court's conclusion is obiter dictum, but it was material whether the country in question had been acknowledged to be independent, and the judgment of the Chief Justice that that acknowledgment should be by the Executive contains his opinion as to the character of recognition which must take place before the fact can be judicially assumed. The concurrence of opinion between Marshall, Story, and Taney, and other able jurists quoted, ought certainly be sufficient to relieve the Secretary of State from the charge of advancing a new and absurd claim—an accusation, it may be noted, which has been flippantly urged by some of the most widely circulated newspapers in the country and by persons in official position who ought to know better. It sometimes happens that an unfriendly feeling toward an individual or an officer begets ill-advised comment.

In *The Ambrose Light* (25 Fed., 443), Judge Brown says:

The additional facts proved show, however, such a subsequent implied recognition by our Government of the insurgent forces as a government *de facto* in a state of war with Colombia and entitled to belligerent rights as should prevent the condemnation of the vessel as prize. A communication from the Department of State to the Colombian minister, bearing date the day of the seizure, seems to me to constitute such a recognition by necessary implication.

Here, therefore, the court not only conceded the right of the President to recognize belligerency, but even held that such recognition was accomplished unintentionally by an executive communication. The action of the Executive, so taken and not designed to recognize belligerency, nevertheless fixed the legal status of this vessel, and justified a judgment against the Government and relieved the vessel from condemnation as prize.

The point determined was obviously material. I am aware that it has been said here, I believe without too much consideration, that we are not bound by the decisions of the courts. In one sense this may be true. As far as voting is concerned, we are scarcely bound by anything. When our names are called, we may vote as we please. But if we can not accept the construction placed upon the organic law for many, many years, for three or four generations, by our ablest judges, we are certainly inconsistent with the attitude which some of us assume

in criticising the Supreme Court because it has lately changed its opinion as to certain propositions.

Mr. Blaine, May 9, 1881, in a letter to Minister Christiancy, said:

If the Calderon Government is supported by the character and intelligence of Peru, and is really endeavoring to restore constitutional government, with a view both to order within and negotiation with Chile for peace, you may recognize it as the existing provisional government and render what aid you can by advice and good offices to that end. Mr. Elmore has been received by me as the confidential agent of such provisional government.

As has already been remarked, it is well settled in diplomacy that the reception of a minister or agent vested with diplomatic functions is a recognition of the existence of the government which has sent the envoy here. Mr. Blaine did not consider it necessary to consult Congress upon this subject. He acted upon the theory that Congress had no authority in the premises.

President Arthur, in his third annual message (1883), in speaking of the difficulties between Chile and Peru, and especially with reference to the uncertain nature of the government of the last-named country, said:

Meanwhile the provisional government of General Iglesias has applied for recognition to the principal powers of America and Europe. If the will of the Peruvian people would be manifested, I shall not hesitate to recognize the government approved by them.

In the message thus sent by President Arthur to the Congress of the United States, and regarding which no unfavorable comment has ever been made here or elsewhere, he wrote, "I shall not hesitate to recognize," etc. President Arthur used the personal pronoun, and seemed to have no doubt of his right to completely recognize independence when, in his official judgment, the occasion might arise.

Can there be such a thing as incomplete recognition of the independence of a government resulting from the declaration of the President seeking to directly recognize it? If the President of the United States to-day receives a minister from the alleged Republic of Cuba, would there be any doubt that that formal reception of the minister would be conclusive of the fact that the new government had been recognized as an independent state?

When Dom Pedro relinquished his claim to the Brazilian throne, President Harrison acted promptly, and in his message to Congress (Foreign Relations 1890, page 4) he says:

Toward the end of the past year the only independent monarchical government on the Western Continent, that of Brazil, ceased to exist, and was succeeded by a republic. Diplomatic relations were at once established with the new government, but it was not completely recognized—

Mark the phrase—

until an opportunity had been afforded to ascertain that it had popular approval and support. When the course of events had yielded assurance of this fact, no time was lost in extending to the new government a full and cordial welcome into the family of American commonwealths.

Mark the phrases "completely recognized," "full \* \* \* welcome into the family of American commonwealths." Is a "complete" or "full" recognition subject to Congressional reversal? Here, therefore, is another Presidential communication to Congress, directly stating that the Executive not only recognized the Brazilian Government, but that he has left nothing to be done to complete the acknowledgement. No one has challenged the efficacy of that recognition, and I again ask, Will anyone say that Congress might have risen in its constitutional might and, by the

passage of a resolution, made void that which the President made complete?

On December 9, 1891, President Harrison, in a message to Congress, stated that which I shall read. These communications were not confidential; they were notoriously made. The country knew all about them. They were printed as Congressional documents, and placed upon the desks of Senators and Representatives, and constitute a portion of the history of this Union. President Harrison said:

The civil war in Chile, which began in January last, was continued, but fortunately with infrequent and not important armed collisions, until August 28, when the Congressional forces landed near Valparaiso and, after a bloody engagement, captured that city. President Balmaceda at once recognized that his cause was lost, and a provisional government was speedily established by the victorious party. Our minister was promptly directed to recognize and put himself in communication with this government so soon as it should have established its de facto character, which was done.

Hence the President, without consulting Congress, without asking for the approval of Congress, without seeking the ratification of his act, without submitting to any further scrutiny than every communication upon the state of the Union must have in this and the other body, sent instructions to Chile, to the American minister, directing him, in virtue of the Executive authority, to recognize the changed condition.

He also recognized the new Government of the Hawaiian Islands under circumstances which were, to say the least, novel. His ability to do this was never doubted, though the wisdom of its exercise was questioned.

The references which I have thus made evince the uniform and unchallenged assertion of Executive jurisdiction, and whatever may be the true construction of the Constitution, the power asserted was complete, absolute, and effective. No action of Congress was needed to ratify or approve. If there is any Congressional power to repudiate such recognition, it can be found nowhere in the Constitution, but is based upon the notion that Congress has powers not granted, and has the right to draw to itself all functions not accorded to or exercised by the other Departments, a contention absolutely in conflict with that organic provision which reserves to the people the powers not granted.

The exclusive right of the Executive has been maintained in almost every instance, the exceptions being where the Executive thought it well to consult Congress, as did President Jackson in the Texas case. But even there he did not relinquish or doubt his authority.

Mr. President, we are apt to confuse the true interpretation of our duty with the result toward which our inclinations point. When we seek to reach a desirable end, or when we find an independent officer exercising his authority in a manner differing from our ideas of propriety, we are too apt to seek to extend the limits of our domain and to interfere with subjects intrusted by law to other hands. Hence it is that legislators differing from the Executive endeavor to defend their criticisms by assuming unwarranted jurisdiction.

The exclusive right of the Executive has been maintained, as I have said, in almost every instance. President Jackson did not recognize the jurisdiction of Congress to do anything more than to advise. He was willing to act upon such advice, not because it was necessary for him to do so, but because in the discharge of

his Executive power he thought it better to do so. Nor is there anything in the resolution which was passed by Congress at that time assuming any greater authority or power than the giving of advice. There are expressions to be found, notably in remarks by Mr. Clay, not altogether consistent, I may say, upon this subject, indicating to some extent that he believed Congress had authority in the premises. We have had such claims of power here, but we have no case where Congress has ousted Executive jurisdiction, or where the proclamation of the Executive upon this subject has ever been repudiated. It seems to me a most peculiar view to assert that there is jurisdiction here not only to upset that which has been done, but to perform acts which it is thought ought to have been performed, but which the Executive has declined to do, and which the Constitution provides, if done at all, shall be done by the President.

In the memorandum upon the power to recognize the independence of a new foreign state (Senate Document No. 56, Fifty-fourth Congress, second session) a large number of authorities are collated which it is unnecessary to review here. The references to the debates concerning the South American revolutions are quite interesting as demonstrating that at that very early date it was generally conceded that the jurisdiction was with the Executive.

Volume 4, page 71, *Memoirs, John Quincy Adams*, we find that that statesman has made the following entry with reference to a conversation with Mr. Monroe:

The President told me that last evening a member of the Senate came to him and asked him if at the Cabinet meetings before the commencement of the session of Congress the determination was taken not to acknowledge the Government of Buenos Ayres, professedly to the end that Congress might take the lead in this measure. And this was now inquired obviously with a view to justify the present conduct of Mr. Clay. The President answered that at that time the questions were proposed whether the Executive was competent to acknowledge the independence of Buenos Ayres, and, if so, whether it was expedient; that it had been concluded the Executive was competent; but that it was not expedient to take the step without the certainty of being supported in it by the public opinion, which, if decidedly favorable to the measure, would be manifested by measures of Congress. Mr. Monroe added, if Mr. Clay had taken the ground that the Executive had gone as far as he could go with propriety toward the acknowledgment of the South Americans, that he was well disposed to go further, if such were the feeling of the nation and of Congress, and had made his motion with that view, to ascertain the real sentiments of Congress, it might have been in perfect harmony with the Executive. But between that and the angry, acrimonious course pursued by Mr. Clay there was a wide difference.

This plainly shows that Mr. Monroe himself believed that the power to recognize is in the President, but he was not averse to consulting those whose right to nullify his acts he denied. But he made no intimation that there was any question as to the exclusiveness of Presidential jurisdiction.

He spoke also, as shown by these quoted remarks, of public opinion. He was naturally anxious to discover the sentiments of the people, though he did not design sacrificing his constitutional power or abdicating any of his constitutional privileges, whatever might be the opinion either of Congress or of the people. He recognized unquestionably that as the servant of the people it was his duty to maintain the laws which had been provided for his guidance, and which he must follow until the people in their sovereign capacity established a different system.

On page 204 of the same memoirs we find the following:

My draft of a dispatch to R. Rush was read. They were all startled at the paragraph announcing it as the President's intention at no remote period to recognize the Government of Buenos Ayres.

The whole conversation, everything that was said—and the remarks are set forth at some length in his memoirs—goes to show that the people, that the Congress, all interested, were anticipating the decision of the Executive upon the matter then pending. That Mr. Monroe asserted the jurisdiction in himself, and that he intended to see that it remained where the Constitution had placed it, no one can deny.

The following significant expressions appear in the same diary, on page 205:

Mr. Crawford now said that if the acknowledgment was to take place, he should prefer making it in another form, not by granting an "exequatur" to a consul, but by sending a minister there; because the Senate must then act upon the nomination, which would give their sanction to the measure. Mr. Wirt added that the House of Representatives must also concur by assenting to an act of appropriation. And the President, laughing, said that as those bodies had the power of impeachment over us, it would be quite convenient to have them thus pledged beforehand.

I said my impressions were altogether different. I would make the acknowledgment as simple and unostentatious as possible, with as little change in the actual state of things as could be. I thought it not consistent with our national dignity to be the first in sending a minister to a new power. It had not been done by any European power to ourselves. If an exchange of ministers was to take place, the first should come from them. As to impeachment, I was willing to take my share of risk of it for this measure whenever the Executive should deem it proper. And instead of admitting the Senate or House of Representatives to any share in the act of recognition, I would expressly avoid that form of doing it which would require the concurrence of those bodies. It was, I had no doubt, by our Constitution an act of the Executive authority. General Washington had exercised it in recognizing the French Republic by the reception of Mr. Genét. Mr. Madison had exercised it by declining for several years to receive, and by finally receiving, Mr. Onís; and in this instance I thought the Executive ought carefully to preserve entire the authority given him by the Constitution, and not weaken it by setting the precedent of making either House of Congress a party to an act which it was his exclusive right and duty to perform.

Crawford said he did not think there was anything in the objection to sending a minister on the score of national dignity, and that there was a difference between the recognition of a change of government in a nation already acknowledged as sovereign and the recognition of a new nation itself. He did not however deny, but admitted, that the recognition was strictly within the powers of the Executive alone, and I did not press the discussion further.

Therefore not only did the Secretary of State in that discussion, and not only did other members of the Cabinet concede and hold the existence of this exclusive power in the President, but the President himself, while believing it to be wise to obtain the approval of Congress, so believed only because of the Congressional power to appropriate and for the reason that he wished that matters should proceed without friction. No intimation is contained at any place in this discussion or in the detailed report of what occurred at that time to warrant any doubt that Mr. Monroe himself held the same views now entertained by Mr. Cleveland and Mr. Olney.

Mr. HOAR. Will the Senator from California allow me?

Mr. WHITE. I yield to the Senator from Massachusetts.

Mr. HOAR. I should like to ask the Senator from California if he does not agree that a declaration of war against a foreign district or country is a recognition of it as a sovereign power?

Mr. WHITE. Such a declaration is undoubtedly an assumption of the existence of a power against which war could be declared. This is certainly true.

Mr. HOAR. Suppose, for instance, Cuba had practically maintained her independence of Spain, Spain being utterly unable to help herself, and Cuba had committed hostile acts upon our com-

merce, is not the power in Congress to declare war with Cuba, as the power is in Congress to regulate commerce with Cuba, under such circumstances, with all the incidents that follow?

Mr. WHITE. Congress may declare war against a nation or it can regulate commerce with a nation. An act of Congress declaring war does not by its terms create independence or declare that status. The declaration assumes the status, however.

Mr. HOAR. So we could not have a treaty of peace?

Mr. WHITE. Well, we could have a treaty; I concede that. A treaty is initiated by the Executive, and the Senate advises and consents.

Mr. HOAR. The Senator will pardon me a moment. I do not want to interfere with his argument. I put this question in support of the conclusion to which I had myself arrived, which is, I think, the one which was in the thought of President Jackson, and perhaps would reconcile every expression which is to be found in our history.

It is very clear that this is an incident, however great or important it is. The power in the Executive is clearly incident to the power not merely to send ambassadors, but to invite the sending of ambassadors from abroad, as the Senator has so well shown, and I agree with the Senator that it is a power which necessarily must continue all the year round, and may be exercised on an hour's notice sometimes, and it can not be exercised by Congress for that reason. But it seems to me, with great respect, that while it is incident to the treaty-making power of which the President is a part, as the Senator said, it is also an incident of certain constitutional powers of Congress. Yet these powers never will be brought into conflict, although they may reside to a limited extent in both. But the question we are dealing with is not whether Congress may have it as incident to the power to regulate commerce, not whether Congress may have it as incident to the power to declare war, not whether Congress may have it as incident to its power of legislation over the conduct of American citizens, not as an incident or consequence; our question now is, Does it rest in Congress primarily and originally before any of these other constitutional things are done?

Now, I agree with the Senator that the very necessity of the case makes it an executive power, and an executive power alone, where nothing is to be done but recognition. So this is a very grave matter that we should not concede unless the Constitution requires it, that the power of recognizing a foreign country may sometimes be a necessary incident to some constitutional legislative power of Congress; and I hope that nothing will occur in this discussion on either side which will amount to a limitation or abridgment of that power. The Senator will pardon me for the interruption.

Mr. WHITE. It is true that the question to which I am immediately addressing myself is the attempt absolutely and directly by a joint resolution to recognize the independence of another government.

Mr. HOAR. As incident to nothing?

Mr. WHITE. Yes, sir; predicated upon nothing incidentally. The resolution directly deals with the subject. It is confined to that specific topic alone. I am not here to enter into a discussion as to the effect of indirect legislation which Congress may perhaps at some time see fit to enact in conflict with Executive view.

It is always dangerous to seek the discussion of irrelevant subjects, or to attempt the adoption of rules to govern cases not yet presented.

As far as a declaration of war or a treaty of commerce are concerned, both presuppose the existence of nationality upon which the declaration or legislation may be operative, but whether in the exercise of our constitutional power of passing a bill regulating commerce, concurred in by the Executive, a peculiar collateral consequence may result, I do not propose at this hour to elaborately consider. Such a course would be foreign to the purpose I have at hand. I am endeavoring to show that, as far as the attempt to directly recognize a revolutionary organization goes, it is not within our sphere. Whether indirect action of Congress might result in the assumption of another national existence, it is not certain that such assumption could absolutely create a nation. But this is speculative. I do not believe that any such conflict of authority or peculiar combination of circumstances will ever be manifested. I could add that we might readily hold commercial relations with communities not constituting a nation. This Government has continued moving in the present channel for many years without, I think, any substantial deviation in practice from the course to which I have alluded.

I do not feel prepared to change our procedure now. The citations which I made from Mr. Adams's account of Mr. Monroe's statement are interesting, and are certainly sufficient to acquit the Executive or the Secretary of State from the charge of asserting anything new. The specific proposition contended for by the present Administration is that in the case of Cuba Congress has not the power directly to declare independence, or even belligerency. I have stated that I believe that contention to be well founded, and I have sought to fortify my opinion by referring to precedent and to principle.

Mr. President, it is clear that the Constitution does not make it the duty of Congress, nor does it give to either House, the authority to receive ambassadors or ministers. This function is conferred upon the President only. It has been suggested that this delegation of authority amounts to nothing more than the enjoining of a duty to extend proper courtesies to diplomatic officers coming from abroad. With due respect, it appears to me that this argument has nothing in reason to sustain it. Can we afford to urge that as important an instrument as the Constitution, upon which our governmental framework absolutely rests, is devoted to any extent or at all to a mere matter of etiquette? The duty which the President must perform under the organic law with relation to ambassadors and ministers is not merely to grasp their hands or to otherwise salute them in the most approved method of the day; nor is it exhausted or even exercised by giving invitations to receptions or dinners. It means more than this. As the Executive is granted the power to receive, so he is accorded the right to determine to whom such reception should be vouchsafed. He receives officially if he believes that the party presenting himself is not only individually the sort of a man who ought to be received, but he also is bound to determine whether he in fact represents a foreign power.

Necessarily this authority to determine is involved in the discharge of the duty to receive. When a person offering himself at the Executive Mansion claims that he is entitled to be received as

a minister, the President, from the very nature of the case, is compelled to decide whether his pretensions are well founded, and in doing this he is bound to find on the issue as to whether the applicant represents a foreign power. Thus the alleged minister of the Cuban Republic seeks to meet the Executive; Mr. Cleveland refuses to receive him, because he declares that the minister does not represent a foreign power. Congress can not dictate to the President as to who he shall receive, for the simple reason that the duty to receive being constitutionally delegated to him, he must determine for himself whether a case has arisen calling for the exercise of that power. It is the duty of Congress to pass laws to govern the country, but it is within its sole discretion to enact or not to enact. If we refuse to appropriate a dollar for public purposes we might be and would be derelict, but no court could mandamus us, because Congress judges for itself as to whether a case has arisen calling for the exercise of its functions.

The President may act badly; indeed, his conduct may justify impeachment. So Congress may behave in an outrageous manner, and the people may be without any further remedy than that which is expressed at the polls. No scheme of government ever devised can insure ability and honesty upon the part of those intrusted with power, and there is no individual or officer to whom authority has been delegated who may not violate his obligations and work evil. But the accomplishment of such regrettable results is no argument against jurisdiction. It must be remembered that the existence of jurisdiction may well mean the power to do not only that which is right, but also that which is wrong.

Where is there a word in the organic law indicating preference for Congressional jurisdiction? The legislative limitations therein prescribed were suggested by ages of experience. Danger lurks in excited multitudes and appears in the consequences of uprisings and insurrections as well as in the remorseless mandates of kingly power. The fathers sought to guard against extremes. The delegation of authority to the Executive was designed to confer exclusive jurisdiction to the extent indicated. Concurrent jurisdiction in such a matter as this would be confusing and lead to perilous disputation. The power thus accorded is not and never will be subject to appeal. Congress must pass a bill over the Presidential veto, because the Constitution so declares; but Congress can not, by bill, modify or abrogate the Executive authority with reference to foreign relations, and especially with regard to receiving ambassadors and ministers. So also of the legislative and executive jurisdictions. Were it otherwise, the whole scheme would be a failure. If the legislative department is preferred, this means that the executive and judicial departments exist only in subordination to Congress, whose edicts are in fact supreme. This position is not only violative of the words of the Constitution, but in conflict with the often expressed intentions of the fathers. It has no support in our history. It is revolutionary, and destructive of that independence without which the Presidential office can never be properly exercised.

#### SOME OF THE DIFFICULTIES OF THE CONTRARY POSITION.

It is intimated that the President has the power to recognize, but it is said that this is only a conditional grant. It is limited in some mode. It exists now, and it may not exist to-morrow. This

position I repudiate, for I find no direct grant to Congress justifying such a conclusion; nor does it appear to me that such authority is granted anywhere by implication, or is the necessary attendant of any authority specifically delegated. If the President recognizes the belligerency or independence of the Cuban Republic, can Congress repudiate such recognition? I take it that this is not possible. If the Presidential recognition of belligerency is valid in any case, in what case is it invalid? And if the President has authority to absolutely recognize independence in any case, is not that authority the result of discretion conferred upon him by the Constitution? And such discretion involves the ability to refuse as well as to grant, and if it is not competent for Congress to nullify Presidential recognition of belligerency or independence, can Congress render nugatory the decision of the President denying such recognition? I think that I have already shown that the framers of the Constitution were not engaged in the business of guarding Congress against the President, but that they felt the necessity of so organizing the Houses that they could not subordinate Presidential jurisdiction within allotted lines save in one mode, to wit, impeachment.

The plenary authority exercised by the President in foreign affairs is exemplified to some extent not only in receiving ministers, but even in providing for the exercise by foreign consuls of authority within the United States.

When the British consul at Charleston, at the beginning of the late civil war, acted in a manner contrary to the wishes of Mr. Lincoln and his Cabinet, the *exequatur* was revoked and Mr. Bunch's powers terminated. No consultation was had with Congress upon this subject. It is discretionary with the President to refuse an *exequatur*, although, as Mr. Blaine declared in his letter to Mr. Morgan, May 31, 1881 (1 *Whar. Int. Law*, page 765), the exercise of that undoubted right is an extreme one, rarely resorted to here.

Instances of the dismissal of ministers are numerous. We remember very clearly the action of Mr. Cleveland in demanding the recall of Minister West, owing to his correspondence with an alleged British subject called, for the time being, Murchison. No power was conferred by Congress upon the President, but he, having the right to control the matter, exercised his prerogative at his discretion.

In Schuyler's *American Diplomacy*, page 136, I find the following:

It may be mentioned here that our Government has never been slow to use its right in asking for the recall of, or of sending away, a foreign minister who becomes obnoxious. The recall of Mr. Genét, the French minister, was asked in 1793; that of Mr. Jackson, the British minister, in 1800; that of Mr. Poussin, the French minister, in 1849; Mr. Crampton, the British minister, was given his passports in 1856; and intercourse ceased with Mr. Catacazy, the Russian minister, in 1871.

In all those cases the act was the act of the Executive; it was the result of Executive discretion; there was no participancy by the legislative department, and none claimed.

If Congress possesses the power to settle the question of belligerency or independence, it is clear that all sources of material information ought to be open to investigation and examination.

I beg leave to refer to remarks made by me on a former occasion touching this question:

There is another ground which appears to me very strong in support of the contention that the recognition power is lodged in the Executive. There

is before the Senate a document which was read by the Senator from Alabama, and which I deem quite important. I refer to House Document 224 of the present session. I read a few lines for purposes of illustration:

"No. 2699.]

CONSULATE-GENERAL OF THE UNITED STATES,

"Habana, January 7, 1896.

"SIR: With reference to the proclamation of the Captain-General of the 2d instant declaring a state of war to exist in the provinces of Habana and Pinar del Rio, copy and translation of which accompanied my dispatch No. 2695 of the 4th instant"—

At this point I find a note stating that the proclamation mentioned is not printed. From this I conclude that the omitted paper has not been revealed to Congress. No one appears to controvert this supposition. When the House adopted the resolution calling for this correspondence it did so in the following phraseology:

"*Resolved*, That the Secretary of State be directed to communicate to the House of Representatives, if not inconsistent with the public interests, copies of all correspondence relating to affairs in Cuba since February last."

The House passed the usual resolution in the regular form which custom authorizes. Manifestly information has been withheld—no doubt properly. Time out of mind, if I may use that expression with reference to this very modern Government, it has been the custom to withhold information, the disclosure of which the Executive deems incompatible with public interest. The document thus legitimately withheld may contain essential and controlling facts upon this subject. That it is important would seem to follow to some extent from the very circumstance that it is retained. Has the Executive the right to thus deny information? Our Chief Magistrates have always done so, pursuant to unchallenged custom and in compliance with recognized usage, evidenced by many hundred resolutions calling upon the Executive for diplomatic information. The President is not directed; he is merely requested, and always with the qualification which I have noted. The Executive right to withhold delicate diplomatic correspondence is incidental to the Presidential office. Can it be that the Constitution has placed upon Congress the burden of deciding and the duty to determine issues concerning belligerent or other relations to foreign powers and has not at the same time compelled the President to give us everything within his knowledge? Can it be that we are to pass upon a part of the case and not upon the whole? Can it be that under the law we are deprived of material evidence and yet are expected to render final and determinative judgment upon an imperfect record—a fraction of the aggregate proof? I say not. The President has before him all information. He reviews a complete history. Plainly, he is in a better condition to judge of the true state of affairs than are we. He has the means to secure all relevant information.

Having in charge the diplomatic relations of the Government, he is, or should be, better advised than the Senate or the House of Representatives, or both.

It was early settled that the Executive could not be compelled to surrender up to both Houses of Congress information which that officer deemed to be of such a character as to render it inadvisable to make a disclosure.

When President Washington sent in the proposed treaty with Great Britain, a question arose as to whether the President had any right to negotiate a treaty of commerce (2 Marshall's Washington, page 377). Mr. Livingstone offered a resolution in the House requesting the President to furnish a copy of the instructions to the minister of the United States who negotiated the treaty with Great Britain. Mr. Madison proposed to amend so as to except such papers as, in the judgment of the President, it might be inconsistent with the interests of the United States at this time to disclose (*id.*, page 378). This proposition was rejected, and the resolution offered by Mr. Livingstone was passed by a vote of 62 to 37. Afterwards the President communicated to the House his refusal, and in concluding it he said:

As it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office under all the circumstances of this case forbid a compliance with your request. (*Id.*, 381.)

I can not find that the power of the President to retain information the disclosure of which he deems incompatible with the public interest has ever been doubted, and the uniform practice of Congress admits this power. We do not direct the President nor do we seek to compel him to make disclosures against his own judgment. On the contrary, the Presidential discretion is in terms conceded in every resolution seeking information from the State Department which Congress sees fit to pass.

The question of the recognition of belligerency or independence should be determined upon a full view of the entire situation. Every fact bearing upon it ought to be before that department charged with the responsibility of acting. It is manifest that the most important documents, the most direct and convincing circumstances, may be contained in official communications containing matter which ought not to be made public. Indeed, it is safe to say that the most important information is doubtless encountered in such documents. The very gravity of the disclosures therein contained makes it inadvisable to surrender them. So that we who claim the right to pass upon this issue must concede that all avenues of information are not open to us—many are open to us, no doubt, but all are not open to us—and that the most material part of the case is withheld in harmony with the Constitution, which, it is claimed, gives us the power to overrule the Executive, notwithstanding his superior facilities for knowing the facts, and his power to withhold information officially received by him, and which appears to him (perhaps correctly) properly determinative of the entire matter. If it be true that the Constitution has made it our duty to pass upon the diplomatic questions involved and has given to the President means of obtaining information not granted to any other department, and has likewise left the disclosure of such knowledge wholly discretionary with him, the system is radically defective. It is not likely that the President requires more data than the Senate or the Congress, and to require us to act without all the evidence is to compel a judgment in the absence of the most material evidence.

I have already referred to the opinion of Mr. Monroe on this subject regarding Executive power. I wish to attract attention to the circumstance that Mr. Monroe deemed it advisable to send commissioners to the South American states for the purpose of enabling him to determine whether he should recognize the independence of the new governments. These commissioners he, as Chief Executive, sent to the South American republics that he might obtain information to justify him in reaching a conclusion as to whether he ought to accord a declaration of independence or not. In many instances subsequent Administrations found it desirable to send emissaries abroad for the purpose of determining similar issues without consulting Congress.

Agents or messengers have been sent not as diplomats or ministers, and therefore without consultation with the Senate, the branch of Congress solely authorized to confirm envoys and plenipotentiaries; but these appointments have been justified, not only in many of the cases cited but in many others, because of the fact that they were the mere agents of the Executive, his messengers sent abroad to bring him word as to affairs concerning which he needed information in order to duly execute a constitutional power, to wit, the recognition of a new government.

The case of Mr. Trist, who was sent as a confidential agent to

Mexico (and the object and purpose of his mission appears, 2 Wharton on International Law, section 154), is an exemplification of the authority of the President in this regard. The appointment of Archbishop Hughes and Bishop McIlhaine, Mr. Everett, Mr. Winthrop, and Mr. J. B. Kennedy as confidential agents with reference to matters connected with the recognition of belligerency during our domestic strife contributes an interesting chapter to the exercise of authority by the President without consulting the Senate and all within the recognized diplomatic limits.

The case often referred to here—so frequently that it is not necessary for me to discuss it—of Mr. Mann and the Hungarian controversy is in point. Mr. Webster's elaborate presentation of the subject and the treatment it received at the hands of Mr. Everett are all in the same line. I will not go over them, for they have been dwelt upon often and are familiar to the Senate and to the country.

When we speak of the advisability of reposing power in one department of the Government in preference to another, our argument is only of value in so far as it tends to illustrate the motives and objects and ends sought to be accomplished by the framers of the Constitution, and in an ambiguous case, if it is found that the lodgment of power in one particular department would be manifestly inadvisable, and if the language is obscure or the construction in doubt, perhaps we may be aided to some extent when we consider it on principle and in the light of the practical interpretation of experience.

#### THE NECESSITY OF SECRECY IN DIPLOMATIC AFFAIRS.

It is notorious that it is practically impossible to preserve secrecy as to matters occurring in the Senate. It frequently happens that debates taking place in supposed executive session are publicly reported; and while it is usually true that the reports made and the deductions drawn are not altogether correct, and there are many omissions of vital and essential features, yet it is also a well-known fact that whenever a sensational proposition or anything calculated to excite public curiosity or interest is announced in executive session it finds its way to the public. The delicacy of foreign negotiations, the ease with which controversies nearly settled may be impeded by ill-advised expressions or premature disclosure, is too plain to need comment.

Nor is this all. We know that the Senate is not now and never has been and never can be as reliable a place for the carrying on of those negotiations which are frequently necessary in the management of international disputes, and the same may be said with more emphasis with reference to Congress. Thus, within a year perhaps, we have heard remarks made with reference to foreign governments with which we were at peace. We have heard a friendly nation called "a toothless wolf," "a Gila monster," "a nation whose symbol of power is a monkey and an organ grinder," and kindred phrases in a body several of whose members now claim almost exclusive diplomatic authority. Our ability to excite a foreign government, our ability to involve the Government of the United States in difficulty, certainly will not be seriously challenged. We are not as successful in procuring the spreading of the wings of peace over the earth. Mr. Sanguily may well doubt the propriety of our interference with his case, which is now being energetically pressed by our State Department.

While intemperate remarks are delivered here, persons in whom we have an interest are being tried and sentenced for violations of municipal law, and our State Department is endeavoring to extricate, by diplomacy, many in whom we are concerned who have, by reason of their desire to liberate another people, placed themselves within the reach of the criminal processes of a friendly power. It is believed that utterances made upon this floor, which could not have any effect for good, have made it more difficult for the Executive to procure liberation of individuals in Cuba who have been in the greatest peril.

The Constitution conferred upon the Senate and the House jurisdiction as to treaties, and also in the matter of certain appointments, and that it was the part of wisdom so to do is, I believe, obvious. Whether we consider a treaty as a contract, in accordance with the views of Mr. Frelinghuysen and others, or whether we regard it as in the nature of legislation (and the Constitution declares a treaty to be the supreme law of the land), it is proper for the lawmaking power to be consulted as to subjects which not only affect foreign relations but often directly interfere with the acts of Congress and the exercise of municipal powers by the several States. In the making of a contract the ability and character of the Senate has always been of great assistance, and I doubt whether there has ever been a topic of international concern submitted in the form of a treaty where much light and many wise suggestions have not emanated from this body. Legislation can not be conducted by the Executive alone, and upon the same principle it may be said that no treaty ought to be made without the cooperation of the Senate, and the framers of the Constitution, in making it impossible to perfect such an instrument in the absence of two-thirds ratification here, undoubtedly considered that such a strong indorsement would atone for the absence of the other branch of Congress. Were the concurrence of the House necessary, there would be much friction, many misunderstandings, and numerous contentions with nations with whom we had been previously on terms of amity. But the justification of the policy to be met with in the matter of ratifying treaties is found in the fact that we there deal not only with foreign governments regarding purely international matters, but with propositions affecting legislation, and which must, as I have already remarked, have more or less effect upon the domestic concerns of the several States.

The difficulties unavoidable in treating diplomatic questions in the Senate must be evident to all. Not only are imprudent remarks indulged in because of impulses natural to momentary excitement, induced occasionally by ill-founded newspaper utterances, mistaken reports—the result of journalistic enterprise and competition—but Senators are in the habit of giving their opinions through resolutions of various kinds, often accompanied by speeches exceedingly demonstrative and very seldom involving the actual opinion of a majority of the Chamber or even of a committee.

Such resolutions, after being discussed at the time of their presentation, are sent to committee and are perhaps never reported back, or if reported are in a modified form; and when the matter is investigated it is perhaps discovered that the circumstances are not such as to warrant the belligerent remarks which had been made at the time of introduction.

When Mr. Cleveland sent in his Venezuelan message there was

considerable excitement. Senators for the first time during my brief incumbency here expressed their appreciation by applause upon the floor. A bill was speedily passed placing the necessary funds in the hands of the Executive to enable him to proceed with the work outlined in the message. Resolutions of varied form were introduced, and finally the Committee on Foreign Relations, through the distinguished Senator from Minnesota [Mr. DAVIS] who sits near me, presented a concurrent resolution of considerable length, purporting to define the Monroe doctrine and to extend its application much beyond the lines laid down by Mr. Cleveland.

Afterwards the same distinguished Senator delivered an address in support of his report. He took very advanced ground. The resolution is still upon our Calendar, and no vote will ever be had upon it. I intend to refer to several other reports of the Committee on Foreign Relations preceding the remarkable Sanguily resolution now before us, and shall endeavor to show that the Secretary of State has done his duty under the law ably and effectively. But I will now yield to the chairman of the Committee on Appropriations [Mr. ALLISON], and if the appropriation bills are again displaced I will continue my argument. At all events, I will not, under prevailing circumstances, proceed further at this late hour.

\* \* \* \* \*

*Friday, February 26, 1897.*

JULIO SANGUILY.

It having been ascertained that Julio Sanguily had been pardoned prior to the consideration of the resolution on that subject referred to in the foregoing remarks, the following proceedings were had in the Senate:

The PRESIDING OFFICER. The hour of 1 o'clock having arrived, it is the duty of the Chair to lay before the Senate the unfinished business, which will be stated.

The SECRETARY. A joint resolution (S. R. 207) demanding the release of Julio Sanguily, an American citizen imprisoned in Cuba.

Mr. PETTIGREW. I ask that the unfinished business be laid aside, and that we proceed with the consideration of the Indian appropriation bill.

Mr. BERRY. Temporarily, without prejudice.

Mr. PETTIGREW. Temporarily, without prejudice, if it is desired.

Mr. MORGAN. It was the understanding, by unanimous consent yesterday, that the joint resolution was to come up at 1 o'clock to-day.

Mr. PETTIGREW. Then I move that it be laid aside.

Mr. MORGAN. The Senator can not do that without violating the unanimous-consent agreement.

Mr. WHITE. I am entitled to the floor on the joint resolution, I believe.

Mr. PETTIGREW. I am not aware of any such unanimous-consent agreement. I should like to have it read.

Mr. WHITE. I do not object to the request of the Senator from South Dakota.

Mr. PETTIGREW. I do not intend to violate a consent agreement.

Mr. LINDSAY. There was no consent agreement about it that I understand.

Mr. BERRY. Is the joint resolution to be temporarily laid aside? The Senator from California who has the floor has no objection to that until we can get through with the bill that is now before the Senate. I appeal to the Senator from Alabama not to urge the joint resolution at this time.

Mr. FRYE. I hope the Senator from Alabama will consent to allow the joint resolution to go to the Calendar. The telegraphic communications received to-day, undoubtedly reliable, show that Sanguily, by advice of his attorney, has, under duress of a two-years' imprisonment, consented to the judgment and the sentence by withdrawing the appeal; that the Queen Regent has signed the pardon, and that Sanguily is free.

Now, while I regard that as unfortunate in many respects, it seems to me it leaves the joint resolution without any necessity of further consideration. I do not believe, and never did, in wasting powder simply for the purpose of making a noise.

I shall vote, under these circumstances, to proceed with the appropriation bill. I do not believe anyone doubts my friendliness to Cuba. Every pulsation of my heart is with the patriots who are fighting for liberty, and I have an utter detestation of the brutalities of Spain; but I do not believe there is any further necessity of considering the joint resolution. I hope it will be permitted to go to the Calendar.

Mr. MORGAN. I am acting here——

Mr. CALL. I ask the Senator from Alabama to allow me to say——

Mr. MORGAN. Who has the floor?

The PRESIDING OFFICER. The Senator from California [Mr. WHITE] has the floor. Does he yield to the Senator from Alabama?

Mr. PETTIGREW. I move to take up the Indian appropriation bill.

Mr. WHITE. I am entitled to the floor; but I have stated that I have no objection to yielding the floor; but I should like to say a word. However, I will yield temporarily to the Senator from Alabama. I do not wish to incommode the Senator in charge of the appropriation bill, and will not do it; but, having the floor, I think I am entitled to the courtesy of a request before I yield it. I may be mistaken.

The PRESIDING OFFICER. The Senator from California yields to the Senator from Alabama.

GEORGE WASHINGTON AGUIRRE.

Mr. MORGAN. I am very thankful to the Senator from California for his courtesy. He has the floor on the joint resolution which is before the Senate, and it can be disposed of if Senators will only contain themselves a little while in a legitimate and in a decent way. I rose under the privilege which was accorded to me by the Senator from California to ask unanimous consent for the adoption of a resolution which I will read:

*Resolved*, That the President is requested, if it is not, in his opinion, incompatible with the public interests, to communicate to the Senate such information as has been furnished to or obtained by the Executive or the Department of State relating to the arrest and imprisonment of and any proceedings against George Washington Aguirre, a youth of 19 years of age, and a

citizen of the United States, who, to obtain the benefit of a general amnesty proclaimed by the Captain-General of Cuba, surrendered to the Spanish authorities in Cuba on the 4th day of July, 1896.

You will observe, Mr. President, that there is quite an association of dates there that have a great hold upon the affections of the American people. He seems to have surrendered on the 4th day of July, 1896, and his name is George Washington Aguirre. He is 19 years of age, and he surrendered under a proclamation of amnesty which invited him to come in and surrender. Doubtless he is one of our American boys, of Cuban origin, who has gone down there to take a hand in that scrimmage, as I am afraid a good many of them are inclined to do. For the benefit of the Senator from Massachusetts [Mr. HOAR], if he doubts the citizenship of this man (he seems to turn his head in this way as if he wanted to make a point of citizenship, as he made yesterday), I will call his attention to another name by reading the following letter:

NEW YORK CITY, *February 24, 1897.*

MY DEAR SIR: I desire to call your attention to the case of George Washington Aguirre, an American citizen, 19 years of age, and a prisoner in the Cubana fortress in Habana since the 4th day of July last. He surrendered under the amnesty proclamation of General Weyler promising freedom to those who gave themselves up. He was promptly ordered to be court-martialed, but by the interference of General Lee this was changed to an order for a civil trial. This civil trial has not come yet and likely never will, without the aid of our Government. The tortures of this boy threaten his life. I make this statement to you upon respectable authority, who have requested this letter. I have no personal knowledge of the facts. The authority of this nation should correct such wrongs, and speedily. His release should be demanded at once.

I am, very truly, yours,

ETHAN ALLEN.

Hon. JOHN T. MORGAN.

Now, there is another name connected historically with the United States, and I suppose I can venture to assume here in presenting this resolution that this boy, whose name is George Washington Aguirre, and who is only 19 years of age, is a citizen of the United States, because Ethan Allen has said so. That is as far as I can go upon it. Now, acting upon that predicate, I want to ask the unanimous consent of the Senate for the adoption of this resolution for information from the President.

Mr. HOAR. What was it the Senator called my attention to? I came into the Chamber as he finished the reading.

Mr. MORGAN. I called attention to the fact that this man was evidently of Cuban birth, born of a Cuban family, because his name is Aguirre. I supposed the Senator would be ready to raise the question of naturalization on him, and I wanted to say that I had no further testimony to offer on the subject than the testimony of Ethan Allen.

Mr. HOAR. The Ethan Allen of the Revolution?

Mr. MORGAN. His grandson.

Mr. PLATT. He is president of the Cuban junta of New York.

Mr. MORGAN. He is a grandson of Ethan Allen of the Revolution and is very apt to be president of a revolutionary junta, or whatever you may call it.

Mr. HOAR. I thought the Senator said something about the case that was up yesterday as I came in.

Mr. MORGAN. No; I was going to get to that after a little. I ask for the adoption of the resolution, Mr. President.

Mr. FRYE. It is only a resolution of inquiry.

Mr. WHITE. If there be no objection and no discussion, I will

yield for that purpose only. I wish to make a very limited number of observations, which will not consume five minutes.

Mr. MORGAN. Of course one objection will carry it over.

The PRESIDING OFFICER. The resolution will be read at the desk for information.

The Secretary read the resolution, as follows:

*Resolved*, That the President is requested, if it is not in his opinion incompatible with the public interests, to communicate to the Senate such information as has been furnished to or obtained by the Executive or the Department of State relating to the arrest and imprisonment of and any proceedings against George Washington Aguirre, a youth of 19 years of age, and a citizen of the United States, who, to obtain the benefit of a general amnesty proclaimed by the Captain-General of Cuba, surrendered to the Spanish authorities in Cuba on the 4th day of July, 1896.

Mr. HOAR. It alleges certain facts.

Mr. GRAY. I rise to say a word and to ask a question.

The PRESIDING OFFICER. Does the Senator from California yield for the purpose?

Mr. WHITE. I can not yield for a debate.

Mr. GRAY. It is not debate. I want to ask a question.

Mr. WHITE. I will yield to the Senator from Delaware.

Mr. GRAY. I want to appeal to the Senator from Alabama that he allow the resolution to be so amended as not to make the Senate of the United States responsible for allegation of fact of which they can know nothing. It may be all true, but if he will put in the word "alleged" before "citizen" and "alleged" before "surrendered," I have no objection to the resolution. Otherwise I have.

Mr. MORGAN. I will do that with great cheerfulness, because the Senate of the United States has got so far that it is not willing to take any responsibility for—

Mr. LINDSAY and Mr. WHITE addressed the Chair.

The PRESIDING OFFICER. The resolution will be amended accordingly. Does the Senator from California yield to the Senator from Kentucky?

Mr. WHITE. For a question.

Mr. LINDSAY. I desire to know whether this able-bodied young man, who abandoned the Cuban cause and took advantage of the amnesty proclamation, ought not to change his name before he asks the Senate of the United States to intervene in his behalf. That was a very un-George Washington like act, and I do not think he comes here in a position to demand any extraordinary consideration at the hands of the Senate.

Mr. MORGAN. How could he change his name?

Mr. CALL. Will the Senator allow me to say a word?

Mr. LINDSAY. I refer to the George Washington part of his name.

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Florida?

Mr. WHITE. I do not want to discriminate, and therefore I yield to the Senator from Florida.

Mr. CALL. Mr. President, I happen to know this young man, George Washington Aguirre. He is a native American, born of Cuban parents, who became naturalized and lived in this country and abroad. He is a young man, animated by a noble, virtuous, honorable sentiment of devotion to the country of his forefathers. He went to Cuba for the purpose of rendering patriotic aid to the cause which he believed in common with all the Cuban people to be

a true and honorable effort to obtain independence. He is quite a youth, not yet being 21 years of age. He was here in Washington just before his departure for Cuba. I have no doubt from these facts, which are within my knowledge, that the statements of the letter read by the Senator from Alabama are true.

Mr. LINDSAY. He did not desert the Cuban cause?

Mr. CALL. I suppose that, like many others, he might have been exhausted by the severe privations, to which he was unaccustomed. I know nothing about that; but a youth, comparatively of tender years, and not accustomed to great exposure, might quite naturally be unable to continue in the service.

Mr. WHITE. As I understand, the resolution in its present form is objected to, and therefore I presume it will go over.

Mr. FRYE. The Senator from Alabama accepted the amendment proposed.

Mr. WHITE. Then, if it may be voted upon without further discussion, I will yield for that purpose.

The PRESIDING OFFICER. The Senator from Alabama accepted the amendment of the Senator from Delaware. Is there objection to the present consideration of the resolution?

Mr. HOAR. Let us hear the amended resolution.

The PRESIDING OFFICER. The resolution will be read as amended.

The Secretary read the resolution as modified, as follows:

*Resolved*, That the President is requested, if not in his opinion incompatible with the public interests, to communicate to the Senate such information as has been furnished to or obtained by the Executive of the Department of State relating to the arrest and imprisonment of and any proceedings against George Washington Aguirre, a youth of 19 years of age, and an alleged citizen of the United States, who, to obtain the benefit of a general amnesty proclaimed by the Captain-General of Cuba, surrendered to the Spanish authorities in Cuba on the 4th day of July, 1896.

Mr. GRAY. Let it read "is alleged to have surrendered." We do not know anything about that.

The PRESIDING OFFICER. The resolution will be so modified.

Mr. ALLEN. I rise to a parliamentary inquiry. If this resolution is passed, does it displace the Sanguily resolution?

The PRESIDING OFFICER. It does not, the Chair will state.

Mr. BERRY and Mr. MILLS. Question.

The PRESIDING OFFICER. The Chair hears no objection to the present consideration of the resolution. Is the Senate ready for the question? The question is on agreeing to the resolution of the Senator from Alabama as modified.

The resolution as modified was agreed to.

Mr. WHITE. Mr. President, I trust that we will find George Washington Aguirre to be a duly qualified citizen of some country. I am not altogether convinced of his innocence, of his impeccability, or his statesmanship. I do not consider these propositions established merely because he bears the name of George Washington. I remember some time ago prosecuting a person, who was sent to the penitentiary of my State, whose name was Juan de Dios (John of God). He never by word or deed justified a claim of honesty.

I do not intend to discuss questions relating to Julio Sanguily at any length to-day for the reasons stated by the Senator from Maine [Mr. FRYE]. I understand that a resolution will be offered later by Mr. Sanguily's friends in this Chamber protesting against his pardon. They seem to be disturbed because he is at liberty.

Objections have already been registered to the action of Sanguily and his counsel in admitting guilt and seeking pardon. It is unfortunate that we have not been able to control Mr. Sanguily in this respect, and his absence from prison will deprive the world of a vast amount of very effective and charming eloquence, accompanied, no doubt, by applause of an intelligent and discriminating character. It is indeed too bad that Sanguily has been pardoned, even though our resolution has not passed and has not been transmitted to the Government of Spain. It is to be hoped, Mr. President, that when the Committee on Foreign Relations brings us a case for discussion hereafter it will be a live case, and it is to be hoped when a resolution is produced here demanding somebody's surrender that we may not discover in the midst of patriotic declamation that the gentleman whose liberty we are seeking to obtain has already successfully petitioned for a pardon and admitted his guilt without consulting us. We can hardly retrieve our position by substituting George Washington Aguirre for Don Julio Sanguily. [Laughter.]

I regret that the chairman of the Committee on Foreign Relations is not in this Chamber. Possibly he may have heard of the pardon of Don Julio Sanguily. Were the chairman of the committee here, I should ask him whether it is true that he had in his pocket, or that his committee had in its custody yesterday, when this question was being considered, a document showing that Mr. Sanguily had petitioned for pardon. Such an assertion has been made, but I should like to know whether it is true. I have no information upon the subject. If the report be true, the Committee on Foreign Relations should not have kept the information from the Senate. If it was not proper information to be given publicly, we might have placed ourselves "in comunicado," and should have closed the doors; in that way we might perhaps have constituted ourselves a body of "pacificos."

I do not wish to interfere with the appropriation bills which were set aside to-day in order that Don Julio Sanguily might be released. I will yield to the Senator from South Dakota to make the motion of which he has already given notice.

\* \* \* \* \*

Mr. LODGE. Mr. President, I had no intention of saying a word on this resolution, which I think was properly laid aside and the appropriation bill taken up. But, in the absence of the chairman of the Committee on Foreign Relations [Mr. SHERMAN], the Senator from California [Mr. WHITE] saw fit to attack that committee and revive the debate, and say one or two things which I do not propose to leave unanswered, as the chairman of the committee is not present to say anything in regard to it.

I am very sorry that the Senator from California should be so disturbed about the flow of eloquence in the Senate on the Sanguily resolution, and about the applause in the galleries. I think he was unreasonably disturbed. He spoke for four hours himself, and no galleries interrupted him. [Laughter.] Also, Mr. President, I want to say that this matter is not to be settled by sneers, nor is an answer made in this case by mispronouncing the name "Julio," nor is this case answered by making fun of some man whose name happens to be that of the great general and statesman whose birthday we celebrated here a few days ago. This matter can not be disposed of by sneers.

The case in which a pardon has just been granted is but one case. There is information which has been withheld from the Senate and from the American people in a great many other cases not in relation to Cubans, but in relation to American citizens. Those will all come to the surface. We shall all see it some day; the Senate will have the opportunity of seeing it; the American people will have the opportunity of seeing it.

As to this specific case and the charge made against the Foreign Relations Committee, I desire simply to say a single word. That committee had received no information that this man had been pardoned. The Committee on Foreign Relations began to consider this case about one month ago. The report they made is dated the 1st day of February. We put the matter over from week to week at the request of the State Department, because we were told that the diplomatic negotiations which had been going on for about twenty-three months were about approaching a close, and the Department hoped in a few days to have this man pardoned. We put it over; and finally we reported the resolution, and we got the man's pardon the next morning. In other words, twenty-three months were consumed in diplomatic negotiations; but after the matter was taken up and it was discussed by the committee and presented at the bar of American public opinion, the news of the man's pardon came by cable this morning, and we are sneered at because we are told he was going to be pardoned any way.

Mr. GRAY. May I ask the Senator a question as to a matter of fact?

Mr. LODGE. Certainly.

Mr. GRAY. The Senator from Massachusetts says that twenty-three months have been consumed by the State Department in negotiations in regard to the case of Sanguily.

Mr. LODGE. I think I have stated the fact correctly.

Mr. GRAY. Is it not a fact that the larger part of those negotiations, and the greater part of the time occupied in pursuing them, was consumed in discussing the treaty between the United States and Spain in regard to citizens of the United States who were arrested for participating in rebellion, without arms in their hands, and demanding for them a trial by a civil court under the treaty; and whether, at last, those negotiations were not successful in procuring that trial, and that the necessary delay was by reason of the procedure of the courts, which, of course, takes time?

Mr. LODGE. I did not enter into what the diplomatic negotiations were about.

Mr. GRAY. The Senator from Massachusetts gave that impression: at least, I so understood him.

Mr. LODGE. I stated that diplomatic negotiations had been going on in regard to this man's case for twenty-three months, and that is absolutely true.

Mr. GRAY. But the Senator gave the impression that futile negotiations were going on for twenty-three months, whereas at different stages the demands made by the State Department were acceded to by the Government of Spain, and the trial demanded before a civil court for Sanguily was granted after necessary delay owing to their form of procedure.

Mr. LODGE. I did not say the negotiations were futile. That word was not used by me, but used by the Senator from Delaware.

Mr. GRAY. I say that is the impression I got from what the Senator stated.

Mr. LODGE. I did not so state, but I shall not quarrel with

the Senator about that. All I said was that for twenty-three months diplomatic negotiations had been going on in regard to this man; that the question has been considered in the committee for one month; that the resolution was reported to the Senate yesterday, and this morning we have cable news that Sanguily is pardoned. Those are the simple facts, and I am perfectly willing to leave them.

Mr. GRAY. Those are not the simple facts.

Mr. LODGE. I beg the Senator's pardon. Had not diplomatic negotiations been going on for twenty-three months?

Mr. GRAY. There it is again, Mr. President. The simple statement is made that negotiations of a diplomatic character have been going on for twenty-three months, and the impression is made—I do not know whether it is sought to be made by the Senator from Massachusetts or not—that negotiations, which were futile in their character, have been going on all that time in regard to the release of Sanguily, whereas a greater part of the time was occupied in demanding the rights of Sanguily under the treaty with Spain.

Mr. CHANDLER. Where was Sanguily all the time?

Mr. LODGE. I did not say that the negotiations were futile. The Senator from Delaware keeps saying that.

Mr. GRAY. I intended that the Senator should state or that I should state for him what the real facts were.

Mr. LODGE. I omitted no facts. I say diplomatic negotiations were going on for twenty-three months, and during that time this man was in prison. There is no question about it. I do not say the negotiations have not been successful. We know they have been successful, because he was released this morning or yesterday.

I say it was twenty-three months that the State Department was engaged in negotiations before the Senate did anything, so that they did not seem unreasonably impatient about it.

Mr. TELLER. Will the Senator allow me to state that this man was tried and condemned on December 3, 1895, and sentenced on December 3, 1895, more than a year ago.

Mr. LODGE. He was sentenced more than a year ago, Mr. President.

Mr. GRAY. The trial from which the appeal was made was had on the 3d of December, 1896. That was the trial against which the State Department protested.

Mr. LODGE. He has been tried, and an appeal has been taken, and all that. But, Mr. President, I do not care to go into the details of it. The facts are perfectly well known.

I only desire to say, in reply to what the Senator from California [Mr. WHITE] has said, that the Committee on Foreign Relations had put this matter over two or three times at the request of the Secretary of State, because Sanguily was about to be released and action was about to be taken as the result of diplomatic negotiations. We had no information yesterday that he was pardoned, so far as I am aware.

Mr. MORGAN. We have none now.

Mr. LODGE. We had no information that he had been pardoned.

Mr. WHITE. Nobody said you had.

Mr. LODGE. I understood the Senator from California—if I misunderstood him, I am very sorry—to say that the committee yesterday had information that Sanguily had been pardoned.

Mr. WHITE. I stated that the committee, as I understood it,

had the information in their pockets, or the chairman had in his pocket a petition filed by this gentleman's counsel and himself, asking for pardon, and that they knew of the processes which had been had in connection with the affair.

Mr. LODGE. What counsel does the Senator refer to?

Mr. WHITE. The counsel, if I may be permitted to pronounce his name—although I have heretofore supposed that I had a little knowledge of the Spanish language—I may be permitted to say Julio Sanguily, notwithstanding a correction by the infallible authority at present upon the floor. [Laughter.]

Mr. LODGE. The Senator is welcome to pronounce that name any way he likes. I thought from his knowledge of Spanish that he was mispronouncing the name humorously, as that is the common form that is employed against Cubans.

All I want to know is who the counsel is who has made this statement. I received no information and the committee received none.

Mr. WHITE. I had no reference to the Senator, and was not thinking of him in connection with the matter.

Mr. LODGE. I can only answer for the committee. The committee received no statement. There was a dispatch read here by the Senator from Maine [Mr. HALE] from Mr. Dominiguez, I think, who said an appeal had been taken. That was read here in open Senate by the Senator from Maine. But there was nothing sent to the committee except a single communication from the State Department, and not from the counsel. That did not say that the pardon had been granted. It said what had been said before, that efforts were being made to obtain a pardon.

Mr. GRAY. Let me ask the Senator whether the information he got in committee—as long as he has spoken of what occurred in the committee—was not to the effect that a pardon had been determined upon just as soon as the condition precedent, which is requisite under Spanish law, had been complied with?

Mr. LODGE. I understood that they were trying to get a pardon.

Mr. GRAY. I tried to get out the information that it had been determined upon by the Spanish executive.

Mr. LODGE. Then the Senator said that a pardon had been granted.

Mr. GRAY. That it had been determined to be granted as soon as the condition precedent, necessary under Spanish law, had been complied with.

Mr. LODGE. That is exactly what I said. I said that we received information that a pardon was shortly expected.

Mr. GRAY. Yes.

Mr. LODGE. And that it had not been granted.

Mr. GRAY. Your previous statement was, unless I misunderstood you—of course I have no altercation, and will have no altercation, with the Senator—that the information was merely that efforts were being made to obtain a pardon.

Mr. LODGE. No; I mean that the process was going on for twenty-three months, or any period you please.

Mr. GRAY. You said it was approaching a conclusion.

Mr. LODGE. That was what we were told at the beginning of February, when we took the matter up—that it was approaching a conclusion. As the Senator well knows, we postponed the matter from week to week on that account.

I did not mean to be drawn into this discussion. What I desired to say was that the committee did not have the information which the Senator from California attributed to it. I know nothing about the counsel except from the dispatch read by the Senator from Maine. I did not then know that the Mr. Dominguez who is named in the dispatch was the counsel for Sanguily.

\* \* \* \* \*

Mr. WHITE. Mr. President, I do not wish to incommode the Senators who have charge of the appropriation bills, and I do not intend to do so, and I will say but a very few words.

The Senator from Massachusetts [Mr. LODGE] seems to think there has been a personal onslaught of some kind upon himself, and he was led to call my attention to the lack of enthusiasm created by my remarks made to the Senate yesterday. I presume his object in thus informing us was designed to excite my envy when contrasting my position with the enthusiastic demonstrations which ever attend his eloquent and relevant statements.

However, I have lived long enough to know that there are many great men in this world and that I have no claim to greatness, and it is enough for me even temporarily to rest in the shadow of the mighty intellectual power whose instruction has been so generously given. I, perhaps, might survive some of the comments of the Senator, but I do not know how I can exist in view of his criticism upon my pronunciation of the name of the party mentioned in the joint resolution. I ventured to call him Julio Sanguily, and the Senate has been informed that I mispronounced his name, and this I did in a disrespectful manner. If it were not for my faith in the abilities of the Senator from Massachusetts and my consequent belief that all of the Spanish scholars I have ever met have been mistaken as to the pronunciation of such names, I would, perhaps, hesitatingly venture to adhere to my own view. I will, however, study the lesson proffered by the Senator from Massachusetts and shall endeavor to absorb some of that learning which must be useful to the Senate, pertinent to this debate, and natural to the Senator from Massachusetts.

I regret that my friend the Senator from Florida [Mr. CALL] also accuses me of having taken up too much time. It is seldom that I take the floor save for an inquiry, whereas the Senator from Florida is a chronic speaker upon the subject of Cuba. He is not in a position to rebuke me for my single infraction. Now, that Julio Sanguily (I hope I may be permitted to continue to so pronounce his name) is free, we are treated to the case of Ruiz, and are told upon the authority of a newspaper, infallible, of course, before all tribunals, that Ruiz was badly treated, murdered in a dungeon. Comments on this topic are directed at me, and, as far as I am able to appreciate the Senator's meaning, the insinuation is conveyed that I and other Senators who do not favor declaring war without ascertaining what we are to fight about are guilty of the murder of Ruiz, and this because Sanguily has been pardoned. This conclusion might be considered slightly illogical by some, but not by the Senator from Florida.

Mr. HALE. Let me ask the Senator whether any motion has been made to substitute any other island for Cuba?

Mr. WHITE. I will say to the Senator from Maine that no motion has been made, but there are insinuations that something of the kind is coming; that if it be true that Sanguily has con-

fessed his guilt, nevertheless there is suffering elsewhere, and it will be urged that while we were mistaken in the case of Sanguily, a valid cause of complaint must exist as to some one. There must be an oppressed innocent somewhere, and we will be fully informed regarding the outrage by illustrations in the newspapers and magnificent orations in the Senate.

Mr. HALE. But no motion has been made to substitute any other island for Cuba?

Mr. WHITE. Not yet.

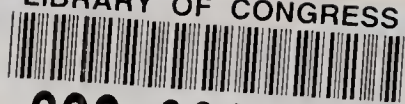
Mr. GALLINGER. We are going to put in the State of Maine next instead of Cuba.

Mr. WHITE. The Senator from Florida, after commenting upon the immense amount of time that I took in discussing the Cuban question yesterday, in order to be truly consistent, proceeded to make a speech upon the subject himself.

I yielded to the appropriation bills, and I will do so again in the hope that these important measures may be passed, and that we may establish a field day for the discussion of Cuba, and give notice to all alleged suffering patriots, wherever found, that their cases will be taken up as soon as the Calendar will permit, and our Navy increased correspondingly to the necessities of our belligerency.



LIBRARY OF CONGRESS



0 028 001 805 3